(23,516)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 438.

SUPREME COUNCIL OF THE ROYAL ARCANUM AND VAL M. SCHMITZ, REGENT OF DE WITT CLINTON COUNCIL, No. 419, OF THE ROYAL ARCANUM, PLAINTIFF IN ERROR,

vs.

SAMUEL GREEN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a Supreme Court, Appellate Division, Second Department.

SAMUEL GREEN, Plaintiff-Respondent,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M SCHMITZ, Regent of DeWitt Clinton Council, No. 419, of the Royal Arcanum, Defendants-Appellants.

Case on Appeal.

Foley & Powell, Attorneys for Defendants-Appellants, 206 Broadway, New York City.
F. J. Moissen, Attorney for Plaintiff-Respondent, 58 Douglass Street, Brooklyn, N. Y.

1 Supreme Court, Appellate Division, Second Department.

SAMUEL GREEN, Plaintiff-Respondent,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M SCHMITZ, Regent of DeWitt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

Statement under Rule 41.

This action was commenced by the service of the summons and complaint on the 19th day of February, 1910. The defendants, on the 17th day of March, 1910, served their answer, and subsequently, on the 16th day of April, 1910, served an amended answer. There has been no change of parties since the commencement of this action, and they are stated in full in the above title. There has been no change of attorneys since the commencement of this action, except that by an order of the Supreme Court, at Special Term, made on the 4th day of August, 1910, Foley & Powell were substituted as attorneys for the defendants in place and stead of Arthur C. Salmon.

2 *Notice of Appeal.*

Supreme Court, Kings County.

SAMUEL GREEN, Plaintiff,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M SCHMITZ, Regent of DeWitt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

SIRS: Take notice that the above named defendants, Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of

DeWitt Clinton Council, No. 419 of the Royal Arcanum, hereby appeal to the Appellate Division of the Supreme Court in and for the Second Department, from the judgment entered herein in the office of the Clerk of the County of Kings on the 23rd day of July, 1910, in favor of the plaintiff and against the defendants, and that the said defendants appeal from each and every part of said judgment.

Dated, August 4th, 1910.

Yours etc.,

FOLEY & POWELL,
Attorneys for Defendants.

Office and Post Office Address, 206 Broadway (Manhattan), New York City, N. Y.

3 To F. J. Moissen, Esq., Attorney for Plaintiff; Henry P. Malloy, Esq., Clerk:

Summons.

N. Y. Supreme Court, County of Kings.

SAMUEL GREEN, Plaintiff,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendant.

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer,

Judgment will be taken against you by default for the relief demanded in the complaint.

Dated, February 10th, 1910.

F. J. MOISSEN,
Plaintiff's Attorney.

Office Address, No. 58 Douglass Street, Borough of Brooklyn, N. Y.

4 *Complaint.*

N. Y. Supreme Court, County of Kings.

SAMUEL GREEN, Plaintiff,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

The plaintiff in the above entitled action complaining of the defendants therein alleges as follows:

First. That at the times hereinafter mentioned the defendant Supreme Council of the Royal Arcanum, is a corporation duly organized by and under the laws of the State of Massachusetts and doing business as a corporation within the State of New York.

Second. That DeWitt Clinton Council No. 419 of the Royal Arcanum is an unincorporated association duly organized by and under the charter of said Supreme Council of the Royal Arcanum consisting of upwards of One hundred members and that the defendant Val M. Schmitz is the president thereof under the name of regent of said council and that said council is doing business in the County of Kings in the State of New York.

Third. That said defendant Supreme Council of the Royal Arcanum is a fraternal beneficiary corporation organized under
5 the laws of Massachusetts as aforesaid for the purpose of providing for the payment of benefits unto its different members in case of their death while such members.

That the business of said defendant is conducted on a lodge or council system by and under its charter authorizing said Supreme Council to create or organize subordinate councils to be and to act under its supervision and under its constitution and by-laws and that the defendant DeWitt Clinton Council No. 419 of the Royal Arcanum was organized as one of such subordinate councils and received a charter from such defendant Supreme Council and did then and there and has since that time duly exercised the powers and performed the duties required of it by and under the constitution and by-laws of said Supreme Council and is still exercising and performing the same.

Fourth. That at the time of the application of the plaintiff hereinafter mentioned, it was provided in and by the constitution and by-laws of the defendant that upon the application of any person to become a member of the said DeWitt Clinton Council and of the performance by such person of the requirements mentioned and set forth in the constitution and by-laws of both of the defendants in this action the person so applying for such membership and admitted thereto became and was a member of both of the organizations of such defendants and became subject to such constitution and by-laws then in existence.

Fifth. That at the time of the application of the plaintiff hereinafter mentioned it was provided in such constitution and by-laws that every person admitted a member of said defendants and being at the time of such admission of the age of thirty-eight years should pay to the collector of the council the sum of One 86/100 dollars,
6 upon each and every assessment which should or would be made by said Supreme Council for the purposes of and under the provisions of its constitution and by-laws of said Supreme Council the same being upon the condition in such constitution and by-laws expressed that each and every member so paying such assessment should not only be entitled to any and all the benefits therein recited but that such person designated by him as his beneficiary should receive upon the decease of such member the sum of Three thousand dollars.

Sixth. That afterwards and during the year 1898 the above mentioned assessment was by and with the consent and acquiescence of the plaintiff and other members of said defendants duly changed in that any person thereafter joining or the member of said defendants who had joined or become such member at the age of thirty-eight years should pay once in each calendar month an assessment amounting to the sum of Three 16/100 dollars, so long as he remained a member of said defendants, together with such extra assessments not exceeding such sum at any one time as might under the provisions of the constitution and by-laws above mentioned (*might*) be properly levied.

Seventh. And it is further provided in and by the constitution and by-laws of said defendants that upon the failure by any of the members of said defendants to pay any of the above mentioned assessments within the time provided thereby, such member shall stand suspended from said defendants' organizations and from any and all benefits to which he may be entitled to or his beneficiary by and under the provisions of the constitution and by-laws of the defendants hereinabove mentioned.

Eighth. That after duly complying on his part with all the rules, requirements and regulations of the constitution and by-laws of the defendants, the plaintiff was received into and became a mem-
7 ber of said defendants in or about the month of July, 1883, he then being of the age of thirty-eight years and is now a member of said defendants and entitled to any and all the benefits flowing therefrom.

Ninth. That in the year 1905, the defendant Supreme Council of the Royal Arcanum without the consent of the plaintiff and in violation of his rights as a member thereof changed the monthly assessments to be paid by him in each month as above stated to the sum of Six 87/100 dollars to be paid in each month from and after the first day of October, 1905, and also providing that unless so paid the plaintiff should be suspended as a member of such defendants and lose and be deprived as also his beneficiary of any and all benefits he or his beneficiary might be entitled to under the provisions of the constitution and by-laws as previously existed and also lose and forfeit all moneys paid by him said plaintiff since he became such member amounting in the aggregate to a large sum of money.

Tenth. That the plaintiff duly objected to such change in his assessment as above stated he agreed to pay but that the defendants notwithstaanding such fact insisted upon such change and that the plaintiff in ignorance of his rights under the law and to preserve his rights as a member of said defendants and intending to preserve his rights as they might exist did pay unto said defendants the said sum of Six 87/100 dollars assessment each and every month since the first day of October, 1905, reserving however, by a notice in writing any and all rights and privileges to which he might be entitled to under the laws of this state by reason of paying said increased assessments by and under the compulsion of said defendants and consequent duress in their threat of suspension of the
8 plaintiff from the benefits he was or would be entitled to by and under the constitution and by-laws of said defendants.

Eleventh. That the plaintiff has duly offered to pay and tendered unto the defendant the sum of Three 16/100 dollars as his assessment for the month of February, 1910, by and under the amendments to the by-laws of the defendant consented to by him in the year 1898 but that the defendants have utterly refused to accept the same and that unless he shall pay the above mentioned sum of Six 87/100 dollars on or before the 28th day of February, 1910, the plaintiff will be suspended as a member of said defendants and will lose all the moneys paid by him to such defendants and any and all the benefits accruing by and under the by-laws of the defendants.

Twelfth. That the above mentioned change in the amount of assessments to be paid by the plaintiff in the year 1905, is and was illegal and oppressive and was made in utter violation and disregard of the rights of the plaintiff and of his contract with the defendants and that the plaintiff has no adequate remedy at law respecting the same.

Wherefore the plaintiff demands judgment against the defendants as follows:

I. That the agreement or contract by and between the plaintiff and defendants by and under the constitution and by-laws of the defendants as altered or amended in the year 1898, be stated and fixed by the order of this Court and be adjudged to be the contract by and between the plaintiff and the defendants the same to remain and be in full force and effect so long as the plaintiff complying therewith remains a member of said defendants.

II. That by such judgment the defendants be adjudged
9 and directed to receive of and from the plaintiff the said sum of Three 16/100 dollars once in each calendar month as his assessment upon his contract with the defendant as a member thereof.

III. That the defendants and their officers be enjoined from suspending the plaintiff as a member of the defendants upon the plaintiff paying or offering to pay the said sum of Three 16/100 dollars once in each calendar month until his decease.

IV. That the plaintiff have such other or further judgment in the premises as shall be just and proper.

V. That the plaintiff recover of the defendants his costs and disbursements of this action.

F. J. MOISSEN,
Plaintiff's Attorney, 58 Douglass Street, Brooklyn, N. Y.

CITY OF NEW YORK,
County of Kings, ss:

Samuel Green, the plaintiff above named, being duly sworn, says: That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge.

SAMUEL GREEN.

Sworn to before me this 10th day of February, 1910.
TIMOTHY C. CRIMMIN,
Commissioner of Deeds,
New York City.

10 *Amended Answer.*

Supreme Court, Kings County.

SAMUEL GREEN
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

The defendants above named, by this their amended answer, answer the complaint of the plaintiff herein as follows:

I. Said defendants deny the allegation contained in paragraph "Third" of said complaint, that the defendant Supreme Council of the Royal Arcanum is organized for the purpose of providing for the payment of benefits unto its different members in case of their death.

II. Said defendants deny each and every of the following allegations contained in paragraph "Ninth" of said complaint, to wit: that the change of monthly assessments mentioned in said paragraph was made without the consent of the plaintiff, and that said change was made in violation of plaintiff's rights as a member of the Royal Arcanum.

III. Said defendants deny that they have any knowledge or information sufficient to form a belief as to each and every of the allegations contained in paragraph "Tenth" of said complaint.

11 IV. Said defendants deny that they have any knowledge or information sufficient to form a belief as to each and every of the allegations contained in paragraph "Eleventh" of said complaint.

V. Said defendants deny each and every of the allegations contained in paragraph "Twelfth" of said complaint.

For an affirmative defense to the complaint of the plaintiff herein the defendants allege, upon information and belief:

VI. That at all the times hereinafter mentioned the defendant Supreme Council of the Royal Arcanum was and still is a fraternal beneficiary corporation, organized and existing under and pursuant to the laws of the Commonwealth of Massachusetts, carried on by its members as a charitable fraternal and social enterprise for their mutual benefit without any element of financial profit, and for the purpose of providing for the payment of benefits in the case of death of a member, to the relatives of or persons dependent upon such deceased member; that its business expenses are paid by a system of per capita taxes which are not called in question in this action and are at all times kept separate and distinct from its Widows' and Orphans' Benefit Fund hereinafter described; that at all of said times its business was and still is conducted on the lodge system, with a representative form of government; that its incorporators, their successors and associates, with the officers, ex-presiding officers and such persons as are admitted as representatives under its laws,

have been and still are a supreme or governing body, with power to create subordinate bodies by the granting to applicants therefor of charters authorizing those named therein to organize as a subordinate lodge and to admit members after its organization, in accord-
12 ance with the ritual prescribed by said supreme or governing body; that the purposes for which the said defendant, Supreme Council of the Royal Arcanum was organized, and as set forth in its constitution and laws at the time when plaintiff became a member of the Royal Arcanum, as hereinafter stated, were as shown by "Exhibit A," which is hereunto annexed and hereby made a part of this amended answer.

VII. That said defendant, Supreme Council, has been duly admitted, pursuant to the laws of the State of New York, to transact business in said State of New York.

VIII. That the defendant, Supreme Council of the Royal Arcanum, at all of said times maintained and still maintains a benefit fund, known as the Widows' and Orphans' Benefit Fund, out of which benefits are paid upon the death of members to the persons who are named in their certificates, issued by said defendant Supreme Council, as beneficiaries, who are required by the laws of the State of Massachusetts and by the laws of the order to be the wife, affianced wife, blood relative of or persons dependent upon the member, and that said benefit fund has been and still is maintained by assessment levied upon and collected from members of the Order of the Royal Arcanum, pursuant to a table of assessment rates adopted by said defendant, Supreme Council.

IX. That the defendant, Supreme Council, has connected with it subordinate lodges or councils, which are composed of members of the Order of the Royal Arcanum, and all of which are governed by the constitution, by-laws and laws of said defendants; that members are admitted to said subordinate lodges or councils upon application thereto, made in writing, and by initiation therein, pursuant to the ritual prescribed by the said Supreme Council.

13 X. That the Supreme Council of the Royal Arcanum is a body composed of its incorporators, officers, representatives elected from grand councils and all past supreme regents or presidents, and that said representatives from said grand councils are elected by representatives elected and chosen by the members of said subordinate councils, and that said Supreme Council has power and authority under said defendants' constitution, by-laws and laws to amend said constitution, by-laws and laws, or either of them.

XI. That on or about the 1st day of May, 1883, the plaintiff herein made application in writing to become a member of one of the subordinate councils or lodges of said defendant Supreme Council of the Royal Arcanum; that a copy of said application is hereunto annexed, marked "Exhibit B" and hereby referred to and made a part of this amended answer; that in this application, and as part thereof, the plaintiff agreed over his own signature to conform in all respects to the laws, rules and usages of the order now in force or which may hereafter be adopted by the same; that shortly thereafter he was admitted to membership in said subordinate council and became a

member of the Order of the Royal Arcanum, and that thereafter the defendant, Supreme Council, issued to plaintiff its certain benefit certificate, a copy of which is hereunto annexed marked "Exhibit C" and hereby referred to and made a part of this amended answer; that this certificate provides that the foregoing agreement contained in the membership application shall constitute a part of the contract between the defendant Supreme Council of the Royal Arcanum and the plaintiff, and stipulates that the plaintiff's right to participate in the Widows' and Orphans' Benefit Fund shall be upon condition that he complies in future with the laws, rules and regulations
14 now governing the said council and fund or that may hereafter be enacted by the Supreme Council to govern the said council and fund; that at the time when plaintiff became a member of said subordinate council and of the Royal Arcanum, the defendant Supreme Council of the Royal Arcanum and its subordinate councils and its members were governed and have been and still are governed by a constitution, by-laws and laws, which at the time the plaintiff became a member of the order contained the following provisions:

"SECTION 1. The Constitution of this Supreme Council and the Laws governing the W. & O. B. Fund, shall not be altered or amended except by a three-fourths vote of the entire membership of the Supreme Council at a regular meeting, or at a special meeting called for the purpose; and all proposed amendments must be presented in writing, signed by three or more members, and referred to and reported upon by the Committee on Laws. If there appears to be more than one vote in the negative upon the adoption of any amendment, a rising vote shall be taken.

"SEC. 2. The Constitution of Subordinate Councils and the Laws of this Supreme Council, except those relating to the Widows' and Orphans' Benefit Fund, may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting called for the purpose, by a two-thirds vote of the members present; provided that such amendment shall be presented in writing, signed by three or more members, and referred to the Committee on Laws for their report before being adopted."

And that the contract effected between plaintiff and the said defendant consisted of plaintiff's application for membership, said constitution, by-laws, laws, rules and regulations and said
15 benefit certificate and the laws of the Commonwealth of Massachusetts; that the statutes of the Commonwealth of Massachusetts in force at the organization of the defendant and at all times thereafter and forming a part of the charter of the defendant Supreme Council of the Royal Arcanum make these rights and powers subject to alteration by the Legislature; that the statutes of Massachusetts authorize the defendant Supreme Council of the Royal Arcanum to enact by-laws for the government of itself and all its members, and authorize it to provide in such by-laws for assessments and benefits in case of disability or death, and the condition upon which the same shall be paid, the amount which shall be deemed one full individual assessment for the respective funds

and for calls for fractional parts thereof, and the loss or forfeiture of membership and benefits, the method of the amendment of the by-laws and such other provisions as the corporation may determine; that it was provided in and by the terms of said contract between plaintiff and said defendant that defendant's rates and tables of assessment for the maintenance of its benefit fund might be modified, altered and changed by the said defendant, and that in the said contract and by the terms thereof the right was reserved by the defendant Supreme Council, to modify, alter and change said assessment rates and tables of assessment rates by duly enacted amendments to its constitution, by-laws and laws.

XII. That prior to the month of May, 1905, there was a table of rates which had been duly adopted by said Supreme Council, and under and pursuant to which assessments had been and were still being levied for the maintenance of said benefit fund, upon all members of the Royal Arcanum including plaintiff; that prior to the said month of May, 1905, it was discovered by the de-
16 fendant, Supreme Council, upon careful investigation, that under the table of assessment rates then in force and effect, some members were being assessed more than their fair proportionate share according to age and risk, for the support and maintenance of said benefit fund, and that other members of said defendant, under and pursuant to said table of rates, were being assessed less than their proportionate share according to age and risk for the maintenance of said benefit fund.

XIII. That in the month of May, 1905, said Supreme Council of the Royal Arcanum, under and pursuant to the provisions hereinbefore set forth, duly revised and amended its table of assessment rates in such manner that under said revised and amended table of rates of assessment each and every member would be assessed such an amount or sum that by paying the same he would pay his fair proportionate share according to his cost and age, for the support and maintenance of said benefit fund, and that by reason of said facts said table of rates as amended is just, fair and equitable; that the changes complained of were duly adopted at sessions of the defendant Supreme Council of the Royal Arcanum, composed of its officers and representatives regularly elected and chosen by the individual members of the order including the plaintiff to act as their representatives and agents for this purpose that this representative body lawfully and properly adopted these changes by a vote of 106 to 3 out of a total membership of 115; that thereafter, some dissatisfaction having been experienced by a few members of the order, a special session of the defendant Supreme Council of the Royal Arcanum was held on August 30th to September 5th, 1905, inclusive, to reconsider the changes complained of, notice of which was given to all members of the order, including the plaintiff,
17 and they were given an opportunity at that session to present any objections they might have to the changes, and that after a long and careful discussion of the whole subject, the former action of the defendant Supreme Council, was affirmed; that the change made in plaintiff's assessment rate, as set forth in paragraph

"Ninth" of his complaint, was made by said revision and amendment.

For a second, further and separate defense to the complaint herein, said defendants allege, upon information and belief:

XIV. That they repeat and renew each and every of the allegations contained in paragraphs VI, VII, VIII, IX, XI, XII and XIII of this amended answer.

XV. That it was and is provided in and by the revised laws of the Commonwealth of Massachusetts, Chapter 119, Section 2, that fraternal beneficiary organizations, of which the defendant, Supreme Council of the Royal Arcanum, is one, may revise, alter and amend their rates of assessment and tables thereof, and that under and by the law of the said Commonwealth of Massachusetts as determined by its courts of competent jurisdiction, fraternal beneficiary corporations, of which said defendant is one, have power to revise, amend and alter their rates of assessment and their tables thereof; that the corporate power of the defendant Supreme Council of the Royal Arcanum, and the plaintiff's rights depending upon his membership therein, are determined by the public acts of the State of Massachusetts which authorize the changes complained of and the plaintiff is bound thereby.

XVI. That it is provided in and by the revised laws of the Commonwealth of Massachusetts, in Section 19 of Chapter 119, that an injunction shall not issue against a fraternal beneficiary corporation otherwise than upon the application of the attorney-
18 general of the Commonwealth of Massachusetts upon his own motion, or on the relation of the insurance commission of the Commonwealth of Massachusetts.

For a third, further and separate defense to the cause of action set forth in the complaint herein, the defendants allege, upon information and belief:

XVII. That they repeat and renew each and every of the allegations contained in paragraphs VI to XIII inclusive, of this amended answer.

XVIII. That the making of said changes and amendments in said table of assessment rates was an act of the defendant Supreme Council of the Royal Arcanum, in the management and control of its internal affairs; that the nature and location of the rights and funds which constitute the subject-matter of this controversy, the nature of the relief demanded, and the dependence of these matters upon the internal management of the corporation required that this controversy be relegated to the Courts of the domicile of the defendant Supreme Council of the Royal Arcanum.

XIX. That by reason of the foregoing facts and premises this Court has not jurisdiction of the person of the defendant Supreme Council of the Royal Arcanum, or of the subject of the action for the purpose of this action, or to grant the relief demanded in the complaint.

For a fourth, further and separate defense to the cause of action set forth in the complaint herein, the defendants allege, upon information and belief.

XX. That they repeat and renew each and every of the allegations contained in paragraphs VI to XIII inclusive of this amended answer; that said revised and amended table of assessment rates went into force and effect on the 1st day of October, 1905;
19 that plaintiff was duly notified of said amended and revised rates of assessment; that since the adoption and enforcement of said amended and revised rates and notice thereof to plaintiff, plaintiff has continued to remain and still is a member of the Royal Arcanum; that since the adoption and enforcement of said amended and revised rates and notice thereof to plaintiff, plaintiff has paid all assessments levied by the defendant Supreme Council of the Royal Arcanum, pursuant to the provisions of said amended and revised rates; that the laws of the defendant Supreme Council, relative to amendments, were the same in the year 1905 as they were prior to the year 1898 and at the time when the assessment rates of the said defendant were changed, as alleged in paragraph "Sixth" of the complaint herein, that plaintiff has thereby ratified the act of the defendant Supreme Council of the Royal Arcanum in so amending and revising its rates, and that plaintiff has thereby estopped himself from denying the legality of said defendant Supreme Council of the Royal Arcanum, in revising and amending said rates, and its right and power to enforce and collect the same.

For a fifth, further and separate defense to the cause of action set forth in the complaint herein, the defendants allege, upon information and belief:

XXI. That they repeat and renew each and every of the allegations contained in paragraphs VI, VII, VIII, IX, X, XI, XII and XIII of this amended answer.

XXII. That in and by the terms of the contract of membership, made by the said plaintiff with the defendant, the Supreme Council of the Royal Arcanum, the said plaintiff agreed, and his acceptance as a member was upon the condition assented to by him, that
20 he would conform to and abide by the constitutions, laws, by-laws, rules and usages of the Supreme Council of the Royal Arcanum, then in force or which might thereafter be adopted by the same.

XXIII. That after the plaintiff became a member of the Order of the Royal Arcanum and in 1890, the said defendant, the Supreme Council of the Royal Arcanum, in accordance with and pursuant to the power and authority vested in it by its charter, and the laws and statutes of the State of Massachusetts, the place of its incorporation and domicile, and in accordance with its own constitution and laws, duly and regularly enacted and adopted an amendment to its laws, by adding thereto and incorporating therein a by-law providing substantially as follows: "No action at law or equity in any Court shall be brought or maintained on any cause or claim arising out of any membership or benefit certificate, unless such action is brought within three years from the time when such right of action accrues;" that the said by-law remained and continued in full force and effect, without change, alteration or amendment thereto until 1909, when the same was duly amended so as to read

as follows: No action at law or in equity in any Court shall be brought or maintained on any cause or claim arising out of any membership or benefit certificate, unless such action is brought within three years from the time when such right of action accrues, or if the action arises upon the death, or alleged death, of a member, within three years from the date of such death;" that the said by-law, as amended, is now in full force and effect; that for the four years from 1891 to 1895, the said plaintiff was a member, and a portion of the time an officer, of the defendant, the Supreme Council of the Royal Arcanum, and made no effort to alter, amend or repeal said by-law, and for nearly twenty years made no objection thereto, but acquiesced therein and ratified and
21 adopted the same as a part of his contract, by and under which he has voluntarily elected to continue his membership in the order of the Royal Arcanum; that it was provided that the change of monthly assessments mentioned in paragraph "Ninth" of the complaint herein should go into force and effect from and after the first day of October, 1905; that plaintiff's cause of action, if any, arose at that time and that more than three years had elapsed since said cause of action accrued before this action was commenced; that since October 1st, 1905, the defendant Supreme Council has received more than 60,000 new members, who joined the order in reliance upon the amendments of which the plaintiff complains in this action; that if the plaintiff were allowed to have the relief for which he asks, the same could be afforded him only at the cost and expense of such new members, to their great damage and injury, and that the plaintiff, by his laches and delay, has estopped himself from any right to relief as against such new members.

For a sixth, further and separate defense to the cause of action set forth in the complaint herein, the defendants allege, upon information and belief:

XXIV. That they repeat and renew each and every of the allegations contained in paragraphs VI, VII, VIII, IX, X, XI, XII and XIII of this amended answer:

XXV. That on or about December 2nd, 1905, one Stephen Reynolds, a member of the defendant order, and fifteen other members thereof who joined the order under the same terms and conditions as the plaintiff filed a bill in equity in the Supreme Judicial Court of Massachusetts, the highest Court of that state and the Court having jurisdiction of the subject-matter of this action, in
22 behalf of themselves and all other members of the said defendant as a class action or "shareholders' bill" to enjoin the collection by the defendant Supreme Council, of the rates set out in paragraph "Ninth" of the complaint, in which proceeding the facts in issue were identical with those set forth in this complaint.

XXVI. That on May 17th, 1906, the Supreme Judicial Court of Massachusetts, the Court of last resort in that state, unanimously found and determined that the facts and the changes of rates of which the plaintiff complains in this action, were fully authorized by the laws of Massachusetts, by the constitution and by-laws of

the defendant Supreme Council and by the contract between the plaintiffs in that action and the defendant Supreme Council and were not in violation of any of the rights of any of the members of the Royal Arcanum and dismissed the plaintiff's bill.

XXVII. That the defendant Supreme Council says that the rights of the plaintiff in respect to his contract with the said defendant and his membership in the defendant order, and the changes adopted by it were and are concluded and determined by the aforesaid judgment of the Supreme Judicial Court of Massachusetts; that under the constitution of the United States the same is entitled to full faith and credit in the State of New York, and that the complaint should be dismissed.

Wherefore, defendants demand judgment against the plaintiff dismissing the complaint herein with costs.

ARTHUR C. SALMON,
Attorney for Defendants.

Office and P. O. Address, 93-95 Nassau Street, Borough of Manhattan, New York City.

23 COUNTY OF KINGS, *ss:*

Arthur C. Salmon, being duly sworn, deposes and says, that he is the attorney for the defendants in this action; that he has read the foregoing amended answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

This verification is made by deponent because the defendant Supreme Council of the Royal Arcanum is a foreign corporation organized under and pursuant to the laws of the Commonwealth of Massachusetts, and deponent is the attorney of said defendant, and the grounds of deponent's belief as to all matters not stated upon his knowledge, are information which he has received as a member of the Supreme Council of the Royal Arcanum and communications received by him from the officers of said Supreme Council.

ARTHUR C. SALMON.

Sworn to before me this 6th day of April, 1910.

EDWIN F. VALENTINE,
Notary Public, Kings County.

COUNTY OF KINGS, *ss:*

Val M. Schmitz, being duly sworn, deposes and says, that he is one of the defendants in the above entitled action; that he has read the foregoing amended answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and
24 belief, and that as to those matters he believes it to be true.

VAL M. SCHMITZ.

Sworn to before me this 6th day of April, 1910.

EDWIN F. VALENTINE,
Notary Public, Kings County.

EXHIBIT A.

"Exhibit A of the answer is set forth as Finding IV on pages 54 and 55 of the transcript of the record, and on page —— of the printed record."

* * * * * * *

25 & 26 EXHIBIT B.

"Exhibit B of the answer is printed as Exhibit L, on pages 116 and 117 of the transcript of the record, and on page —— of the printed record."

* * * * * * *

27 EXHIBIT C.

Exhibit C of the answer is printed as Exhibit 2 on pages 118 and 119 of the transcript of the record, and on page —— of the printed record.

* * * * * * *

28 *Decision.*

Supreme Court, Kings County.

SAMUEL GREEN
against
SUPREME COUNCIL OF THE ROYAL ARCANUM et al.

The above entitled action having been duly brought to trial before the undersigned, one of the justices of the Supreme Court of the State of New York, at a Special Term of said Court,
29 held in and for the County of Kings, and the same having been submitted to me on the 9th day of July, 1910, and I having heard the proof and allegations of the parties, I do find the following:

Facts.

I. That the defendant Supreme Council of the Royal Arcanum is a corporation duly organized by and under the laws of the State of Massachusetts.

II. That said defendant Supreme Council, pursuant to the Laws of the State of New York, has been *admitted* by the duly constituted authorities of said State duly admitted to transact business in said State.

III. That the defendant De Witt Clinton Council No. 419, of the

Royal Arcanum, is a voluntary unincorporated association composed of upwards of One hundred members, duly organized by and under the Charter of said Supreme Council of the Royal Arcanum, and that the defendant Val M. Schmitz is the president thereof, under the name of Regent of said Council, and that said Council is doing business in the Borough of Brooklyn, County of Kings, in the State of New York.

IV. That the defendant Supreme Council of the Royal Arcanum is a fraternal beneficiary association, organized for the purpose of providing for the payment of benefits unto the beneficiaries of its members, in case of their death while such members.

V. That the business of said defendant is conducted on a lodge or council system, by and under its charter authorizing said Supreme Council to create or organize subordinate councils to be and act under its supervision and under its constitution and by-
30 laws, and that the defendant De Witt Clinton Council No. 419, of the Royal Arcanum, was organized as one of such subordinate council- and received a charter from such defendant Supreme Council, and did then and there, and has since that time, duly exercised the powers and performed the duties required of it by and under the constitution and by-laws of said Supreme Council and is still exercising and performing the same.

VI. That at the time of the application of the plaintiff hereinafter mentioned, it was provided in and by the constitution and by-laws of the defendant that upon the application of any person to become a member of the said De Witt Clinton Council and of the performance by such person of the requirements mentioned and set forth in the constitution and by-laws of both of the defendants in this action, the person so applying for such membership and admitted thereto became and was a member of both of the organizations of such defendants, and became subject to such constitution and by-laws then in existence.

VII. That at the time of the application of the plaintiff hereinafter mentioned it was provided in such constitution and by-laws that every person admitted a member of said defendants and being at the time of such admission of the age of thirty-seven years, should pay to the collector of his council the sum of One 80/100 dollars, upon each and every assessment which should or would be made by said Supreme Council for the purposes of and under the provisions of its constitution and by-laws of said Supreme Council, the same being upon the condition in such constitution and by-laws expressed that each and every member so paying such assessment should not only be entitled to any and all the benefits therein re-
cited, but that such person designated by him as his bene-
31 ficiary should receive upon the decease of such member the sum of Three thousand dollars.

VIII. That afterwards, and during the year 1898, the above mentioned assessment was by and with the consent and acquiescence of the plaintiff, and other members of said defendants, duly changed in that any person thereafter joining, or the member of said defendants, who had joined or become such member at the age of thirty-

seven years, should pay once in each calendar month an assessment amount- to the sum of Three 16/100 dollars, so long as he remained a member of said defendants, together with such extra assessments not exceeding such sum at any one time as might, under the provisions of the constitution and by-laws above mentioned, *might* be properly levied.

IX. And it is further provided in and by the Constitution and by-laws of said defendants that upon the failure by any of the members of said defendants to pay over any of the above mentioned assessments within the time provided thereby, such member shall stand suspended from said defendants' organizations, and from any and all benefits to which he may be entitled to or his beneficiary by and under the provisions of the constitution and by-laws of the defendants hereinabove mentioned.

X. That after duly complying on his part with all the rules, requirements and regulations of the constitution and by-laws of the defendants, the plaintiff was received into and became a member of said defendants in or about the month of May, 1883, he then being of the age of thirty-seven years and is now a member of said defendants and entitled to any and all the benefits flowing therefrom.

32 XI. That in the year 1905, the defendant Supreme Council of the Royal Arcanum, without the consent of the plaintiff and without notice to him and in violation of his rights as a member thereof, changed the monthly assessments to be paid by him in each month, as above stated, to the sum of Six 87/100 dollars, to be paid in each month from and after the first day of October, 1905, and also providing that unless so paid that the plaintiff should be suspended as a member of such defendants and lose and be deprived as also his beneficiary, of any and all benefits he or his beneficiary might be entitled to under the provisions of the constitution and by-laws as previously existed and also lose and forfeit all moneys paid by him, said plaintiff, since he became such member, amounting in the aggregate to a large sum of money.

XII. That the plaintiff duly objected to such change in his assessment, as above stated, he agreed to pay but that the defendants, notwithstanding such fact, insisted upon such change and that the plaintiff, in ignorance of his rights under the law, and to preserve his rights as a member of said defendants, and intending to preserve his rights as they might exist, did pay unto said defendants the said sum of Six 87/100 dollars assessment, each and every month since the first day of October, 1905, reserving, however, by a notice in writing, any and all rights and privileges to which he might be entitled to under the laws of this State by reason of paying said increased assessments by and under the compulsion of said defendants and consequent duress in their threat of suspension of the plaintiff from the benefits he was or would be entitled to by and under the constitution and by-laws of said defendants.

33 XIII. That the plaintiff has duly offered to pay and tendered unto the defendant the sum of Three 16/100 dollars as his assessment for the month of February, 1910, by and

under the amendments to the by-laws of the defendant, consented to by him in the year 1898, but that the defendants have utterly refused to accept the same and that unless he shall pay the above mentioned sum of Six 87/100 dollars on or before the 28th day of February, 1910, the plaintiff will be suspended as a member of said defendants and will lose all the moneys paid by him to such defendants and any and all the benefits accruing by and under the by-laws of the defendants.

XIV. That the above mentioned change in the amount of assessments to be paid by the plaintiff in the year 1905, is and was illegal and oppressive and was made in utter violation and disregard of the rights of the plaintiff and of his contract with the defendants and that the plaintiff has no adequate remedy at law respecting the same.

XV. That the defendant Supreme Council has no general office in any Town or City of this State, and has not appointed any person within this State to receive process for it or upon whom process for it might be served, as provided by the laws of the State of New York, in such case made and provided.

XVI. That at the time of such alteration of the by-laws in the year 1905, hereinabove mentioned, the defendant, from the assessments received from its members since the year 1898, had in its possession or control an emergency fund amounting to the sum of over Two million dollars, in which fund the plaintiff herein was beneficially interested.

XVII. That defendants had right to call extra assessments, if necessary.

34 XVIII. That the assessments to be paid by plaintiff were at all times fixed as to amount, subject to be increased only by additional number.

XIX. That plaintiff could not avail himself of any opportunity to be heard at Supreme Council in opposition to change and no individual notice was given to attend.

XX. So far as plaintiff could be heard in Supreme Council, it was through the representatives from his State, and they unanimously opposed the change of rates.

XXI. That the contract in all its essentials between the parties, was entered into, made and completed in the State of New York.

XXII. That the amendments prescribing a three-year limitation was passed in the year 1890, seven years subsequent to the date of the defendants' contract with plaintiff.

XXIII. That defendant has accumulated a reserve or so-called emergency fund of about $6,000,000, obtained from assessments levied in excess of amount necessary to pay death claims.

XXIV. That the 60,000 members who have joined the order since October 1, 1905, are bound by the laws then in force and not those as existing prior.

XXV. That the case of Reynolds v. Supreme Council of the Royal Arcanum, in Massachusetts, was decided upon an agreed statement of facts and plaintiff was not directly or indirectly a party thereto.

XXVI. That the defendant Supreme Council of the Royal Arcanum is a fraternal beneficiary corporation, organized and existing under and pursuant to the laws of the Commonwealth of Massachusetts.

35 XXVII. That the defendant Supreme Council of the Royal Arcanum was organized on June 23rd, 1877, and that it was incorporated on November 5th, 1877.

XXVIII. That the Supreme Council of the Royal Arcanum, as shown by its charter, was incorporated for the purpose of fraternal union, aid to its members and their dependents, the education socially, morally and intellectually of its members, assisting the widows and orphans of deceased members, establishing a fund for the relief of sick and distressed members, and one for a widows' and orphans' benefit fund.

XXIX. That the objects of the Order of the Royal Arcanum, as stated in its by-laws, at the time when plaintiff became a member, were:

1st. To unite fraternally all white men of sound bodily health and good moral character, who are socially acceptable and between twenty-one and fifty-five years of age.

2nd. To give all moral and material aid in its power to its members and those dependent upon them.

3rd. To educate its members socially, morally, and intellectually; also to assist the widows and orphans of deceased members.

4th. To establish a fund for the relief of sick and distressed members.

5th. To establish a widows' and orphans' benefit fund, from which, on the satisfactory evidence of the death of a member of the order, who has complied with all its lawful requirements, a sum not exceeding three thousand dollars shall be paid to his family, or those dependent on him, as he may direct, and that the objects of the order, as stated in its by-laws, have continued without

36 substantial change down to the present time.

XXX. That the business of the Supreme Council of the Royal Arcanum is conducted in accordance with the statutory law of Massachusetts, on the lodge system, said lodges being known as "Councils," and that said Supreme Council is the governing body thereof.

XXXI. That the subordinate lodges or councils which are composed of members of the Order of the Royal Arcanum, are all governed by the by-laws of said Supreme Council of the Royal Arcanum, and that members are admitted to said subordinate lodges or councils upon application thereto, made in writing, and by initiation therein.

XXXII. That the moneys collected into the Widows' and Orphans' Benefit Fund are used to pay beneficiaries of deceased members and for no other purposes whatsoever, and have not been used for any other purpose whatsoever since the year 1883.

XXXIII. That the expenses of the defendant Supreme Council of the Royal Arcanum are borne by annual dues of 80¢ per member on the entire membership, by some profit from the sales of

supplies, and by interest on such investments of its general fund as are accrued.

XXXIV. That the Supreme Council of the Royal Arcanum is not conducted for the profit of any person or persons.

XXXV. That the Order of the Royal Arcanum has a membership of about 245,000, and that its outstanding benefit certificates in the aggregate, amount to about $500,000,000.

37 XXXVI. That the amount collected annually into the Widows' and Orphans' Benefit Fund is about $8,000,000, and that this is collected by assessments from members.

XXXVII. That the number of assessments levied and collected from the commencement of the order, in 1877, down to and including the 31st day of December, 1909, were as follows, for each and every year:

1878.....	3	1888.....	14	1899.....	22
1879.....	7	1889.....	13	1900.....	22
1880.....	6	1890.....	15	1901.....	22
1881.....	8	1891.....	16	1902.....	22
1882.....	9	1892.....	15	1903.....	22
1883.....	10	1893.....	15	1904.....	22
1884.....	11	1894.....	16	1905.....	22
1885.....	11	1895.....	15	1906.....	22
1885.....	10	1896.....	16	1907.....	22
1886.....	12	1897.....	17	1908.....	22
1887.....	14	1898.....	15	1909.....	22

XXXVIII. That the defendant Supreme Council of the Royal Arcanum has paid out altogether, in death benefits, about $133,000,000.

XXXIX. That the membership of the Supreme Council of the Royal Arcanum is composed of its officers, representatives from Grand Councils, and of past Supreme Regents; that the representatives from said Grand Council to said Supreme Council are elected by the members of Grand Councils, and that said Grand Councils are composed of the officers thereof and representatives elected to said Grand Councils from the subordinate or local councils of the order.

XL. That the by-laws of the defendant Supreme Council
38 of the Royal Arcanum, at all times during the plaintiff's membership, have contained full requirements for the use of regalia, jewels, uniform and ritual, and for the promotion of the social and fraternal features of the order.

XLI. That the defendant Supreme Council of the Royal Arcanum has been duly admitted, pursuant to the laws of the State of New York, to transact business in said State of New York.

XLII. That plaintiff, in or about the month of May, 1893, made application in writing to become a member of DeWitt Clinton Council No. 419, Royal Arcanum.

XLIII. That in and by the terms of said application, he agreed to made punctual payment of all dues and assessments for which he might become liable, and to conform in all respects to the laws, rules

and usages of the Supreme Council of the Royal Arcanum, then in force, or which might be thereafter adopted by the same.

XLIV. That after said application plaintiff was duly initiated in said council and became a member thereof.

XLV. That in the obligation signed by plaintiff, on the 10th day of June, 1883, plaintiff solemnly promised that he would strictly comply with all laws, rules and usages of the fraternity established by the Supreme Council of the Royal Arcanum; that he would hold allegiance to said Supreme Council, and be loyal thereto as the supreme authority of the entire order, and that said obligation is attached to the application for membership hereinbefore mentioned.

XLVI. That thereafter, and on or about the 21st day of June, 1883, the defendant Supreme Council of the Royal Arcanum,
39 issued to plaintiff a benefit certificate, wherein and whereby it was provided that, upon evidence received from DeWitt Clinton Council No. 419, of the Royal Arcanum, plaintiff was a contributor to the Widows' and Orphans' Benefit Fund of the order, and upon condition that he should comply, in the future, with the laws, rules and regulations then governing said Supreme Council and fund, or that might thereafter be enacted by the Supreme Council to govern said council and fund, the Supreme Council of the Royal Arcanum would pay out of its Widows' and Orphans' Benefit Fund to Louisa Green (wife), a sum not exceeding $3,000, upon satisfactory evidence of the death of plaintiff, upon the surrender of said certificate, and provided that plaintiff was in good standing in the order at the time of his death, and further provided that the said certificate should not have been surrendered by plaintiff and another certificate issued at his request, in accordance with the laws of the order.

XLVII. That at the time when plaintiff became a member of the order, it was provided in the by-laws that the defendant Supreme Council of the Royal Arcanum should be known as the "Supreme Council of the Royal Arcanum," with power to make its own constitution, rules of discipline and laws for the government of the whole order.

XLVIII. That at the time when plaintiff became a member of DeWitt Clinton Council, No. 419, Royal Arcanum, it was provided in the constitution and laws of the defendant Supreme Council of the Royal Arcanum, that the constitution of said Supreme Council and the laws governing the Widows' and Orphans' Benefit Fund might be amended by a three-fourths vote of the entire membership of said Supreme Council, at a regular meeting, or at a special meeting, called for the purpose.

40 XLIX. That from the time of plaintiff's reception into said DeWitt Clinton Council, he paid assessments at the rate of $1.87 per assessment, and continued to pay assessments at the same rate until the year 1898.

L. That prior to the year 1898, assessments were levied by the Supreme Council of the Royal Arcanum as deaths occurred.

LI. That the rates of assessment paid by members of the Royal Arcanum, upon a Three thousand dollar certificate, as and for their

contribution to the Widows' and Orphans' Benefit Fund, at the time when the plaintiff became a member and down to 1898, were as follows:

Between	the	ages	of	21	and	22	$1.00
"	"	"	"	22	"	23	1.04
"	"	"	"	23	"	24	1.08
"	"	"	"	24	"	25	1.12
"	"	"	"	25	"	26	1.16
"	"	"	"	26	"	27	1.20
"	"	"	"	27	"	28	1.24
"	"	"	"	28	"	29	1.28
"	"	"	"	29	"	30	1.32
"	"	"	"	30	"	31	1.38
"	"	"	"	31	"	32	1.44
"	"	"	"	32	"	33	1.50
"	"	"	"	33	"	34	1.56
"	"	"	"	34	"	35	1.62
"	"	"	"	35	"	36	1.68
"	"	"	"	36	"	37	1.74
"	"	"	"	37	"	38	1.80
"	"	"	"	38	"	39	1.86
"	"	"	"	39	"	40	1.96
"	"	"	"	40	"	41	2.06
"	"	"	"	41	"	42	2.16

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"	"	"	"	42	"	43	2.26
"	"	"	"	43	"	44	2.36
"	"	"	"	44	"	45	2.46
"	"	"	"	45	"	46	2.58
"	"	"	"	46	"	47	2.70
"	"	"	"	47	"	48	2.82
"	"	"	"	48	"	49	2.96
"	"	"	"	49	"	50	3.10
"	"	"	"	50	"	51	3.26
"	"	"	"	51	"	52	3.42
"	"	"	"	52	"	53	3.60
"	"	"	"	53	"	54	3.80
"	"	"	"	54	"	55	4.00

LII. That after the year 1898, assessments were made payable monthly.

LIII. That the rates of assessment paid by members of the Royal Arcanum, upon Three thousand dollar certificate, as their contribution to the Widows' and Orphans' Benefit Fund, from the year 1896 to the year 1905, were as follows:

Between the age of—	Amount.
21 and 22	$1.76
22 " 23	1.82
23 " 24	1.90
24 " 25	1.96
25 " 26	2.04
26 " 27	2.10
27 " 28	2.18
28 " 29	2.24
29 " 30	2.32
30 " 31	2.42
31 " 32	2.52
32 " 33	2.62
33 " 34	2.74
42 34 " 35	2.84
35 " 36	2.94
36 " 37	3.04
37 " 38	3.16
38 " 39	3.26
39 " 40	3.44
40 " 41	3.60
41 " 42	3.78
42 " 43	3.96
43 " 44	4.14
44 " 45	4.30
45 " 46	4 52
46 " 47	4.72
47 " 48	4.94
48 " 49	5.19
49 " 50	5.42
50 " 51	5.70
51 " 52	5.98
52 " 53	6.30
53 " 54	6.56
54 " 55	7.00

LIV. That from the year 1908 to the year 1905, plaintiff paid monthly assessments of $3.16 each.

LV. That in the year 1905, a change was made by said Supreme Council of the Royal Arcanum in its assessment rates, and the assessment rate of plaintiff was changed from $3.16 to 6.87.

LVI. That prior to the year 1905, the question of a change of assessment rates was taken up by the executive committee of the Supreme Council of the Royal Arcanum, which consisted of eleven members, created pursuant to the laws of the Supreme Council of the Royal Arcanum; that William Francis Barnard, an insurance actuary, was consulted; that the statistics of the Royal Ar-
43 canum were submitted to him, and that from these statistics he formulated a table of rates; that at a regular meeting of the Supreme Council of the Royal Arcanum, in 1905, a report was

presented by the executive committee of that body, recommending the adoption of the rates of assessment formulated as aforesaid.

LVII. That upon said report there was a long discussion continuing four or five days.

LVIII. That said report and rates of assessment therein recommended and now in force, were adopted by a vote of about 102 to 3.

LIX. That the vote required at that time, under the laws, to amend the laws of said Supreme Council, was 77.

LX. That in the year 1903, there was prepared a tabulation of the experience of the order, which brought under consideration about 400,000 lives.

LXI. That this tabulation was submitted by the defendant Supreme Council of the Royal Arcanum to the said actuary William Francis Barnard.

LXII. That from said tabulation of experience, the said actuary, William Francis Barnard, prepared the rates of assessments adopted in 1905, as hereinbefore set forth.

LXIII. That such rates actually represent the actual cost to the order for the benefits promised to members of each age.

LXIV. That such rates of assessment, adopted in 1905, equitably apportion the cost of protection among the members of the order, according to age and risk.

LXV. That assuming that the future experience of the Royal Arcanum will be the same as that upon which the rates
44 adopted in 1905 were based, said rates will provide sufficient revenues to maintain solvency and enable the order to meet all maturing mortuary obligations through the future.

LXVI. That assuming that the experience of the Royal Arcanum is the same as that of the first twenty-seven years of its existence, then, if the members of the Royal Arcanum pay the amount of assessments fixed in the assessment tables adopted in 1905, the Royal Arcanum can continue to pay the maximum face value on its certificates at their maturity.

LXVII. That the assessment rates adopted by the Supreme Council of the Royal Arcanum in 1905, equitably apportion among the members their contributions to the Widows' and Orphans' Benefit Fund, taking into consideration age and risk.

LXVIII. That the rates of assessment adopted by the Supreme Council of the Royal Arcanum in the year 1905, for holders of a Three thousand dollar certificate, were:

Age.	Regular Rate.	Option A.
21	$1.89	$2.43
22	1.92	2.49
23	1.95	2.58
24	1.98	2.67
25	2.01	2.76
26	2.04	2.85
27	2.07	2.97
28	2.10	3.06
29	2.13	3.18

30	2.16	3.30
31	2.22	3.39
32	2.28	3.51
33	2.34	3.63
34	2.40	3.75

45

35	2.49	3.90
36	2.58	4.08
37	2.67	4.26
38	2.79	4.44
39	2.91	4.62
40	3.03	4.83
41	3.18	5.04
42	3.33	5.28
43	3.48	5.49
44	3.63	5.73
45	3.78	6.00
46	3.93	6.24
47	4.11	6.54
48	4.29	6.84
49	4.47	7.20
50	4.65	7.56
51	4.83	7.95
52	5.04	8.34
53	5.25	8.73
54	5.46	9.09
55	5.67	9.42
56	5.88	9.72
57	6.09	10.23
58	6.33	10.77
59	6.57	11.34
60	6.87	11.97
61	7.23	12.63
62	7.65	13.35
63	8.10	14.16
64	8.64	15.06
65	16.08	16.08

LXIX. That subsequent to said regular meeting, and in the same year, a special session of the Supreme Council of the Royal Arcanum was called, owing to some dissatisfaction in the order.

46 LXX. That the call for this special session was published in a paper published by the order and mailed to all members of the order.

LXXI. That said special session lasted five or six days; that no other matters were taken up than the matter of rates, and that at said session these matters were discussed over again.

LXXII. That at said meeting, the rates adopted at the regular session in 1905, were re-affirmed, excepting one table, which was

taken out, and that said table, so taken out, does not appear in the laws of 1905, as received in evidence in this action.

LXXIII. That at said special meeting of the Supreme Council, its deliberations and hearings were not confined to members of the Supreme Council itself; that members of the order were permitted to appear before said Supreme Council and express their views upon the question of rates of assessment.

LXXIV. That the amounts paid into the Widows' and Orphans' Benefit Fund by plaintiff were as follows, to wit: At his first rate $388.80; at his second rate $271.76, and at his third rate $370.98, making a total of $1,031.51.

LXXV. That a member of the Royal Arcanum may at any time, when in good standing, upon payment of the fee provided, make a written surrender of his benefit certificate and direct that a new certificate be issued to him, payable to such beneficiary or beneficiaries as such member may designate, according to the laws of the order.

LXXVI. That it is provided by the by-laws of the Supreme Council of the Royal Arcanum, that no action at law or in equity in any Court shall be brought or maintained upon any cause or
47 claim arising out of any membership or benefit certificate, unless such action is brought within three years from the time when such right of action accrues, and that said provision has been a part of said by-laws since 1890.

LXXVII. That by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment.

LXXVIII. That from the 1st day of October, 1905, to the 1st day of February, 1910, plaintiff paid assessments for the Widows' and Orphans' Benefit Fund, monthly, at the rate of $6.87 for each assessment.

LXXIX. That since the adoption of its amended assessment rates in 1905, the Royal Arcanum has received about 63,000 new members, and there have been reinstated into its membership about 9,000.

And I therefore find as

Conclusions of Law.

First. That the plaintiff is entitled to a judgment in his favor against the defendants, to the effect that the contract by and between the plaintiff and the defendants is that the defendant Supreme Council of the Royal Arcanum shall, upon the decease of the plaintiff, pay the sum of Three thousand Dollars unto the person designated by the plaintiff as his beneficiary, providing the said plaintiff be then a member of said defendants.

Second. That the plaintiff shall pay unto the defendants the sum of $3 16/100 once in each month, with such additional assessments at said sum as may be lawfully imposed, so long as he shall
48 remain a member, as an assessment to the Widows' and Orphans' Benefit Fund, or such fund as may hereafter be

provided by the by-laws of said defendants for the payment of said sum of Three thousand dollars above mentioned.

Third. That the defendants be adjudged and be directed to receive of and from the plaintiff the above mentioned sum of Three 16/100 Dollars as his assessment upon his contract with the defendants, as a member thereof.

Fourth. That the defendants be enjoined from suspending the plaintiff as a member of the defendants, upon the plaintiff paying or offering to pay the said sum of Three 16/100 dollars for each assessment lawfully imposed, once in each calendar month, until his decease.

Fifth. That the plaintiff recover of and from the defendants his costs and disbursements of this action.

Dated, Brooklyn, July 23rd, 1910.

WILLIAM J. KELLY, *J.*

49 *Judgment.*

At a Special Term of the Supreme Court of the State of New York, Held at the Court House, in the Borough of Brooklyn, County of Kings, on the 23d Day of July, 1910.

Present: Hon. William J. Kelly, Justice.

SAMUEL GREEN
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum.

The above entitled action having been duly commenced by the service of the summons and complaint therein upon the defendants and the said defendants having duly interposed their answer to such complaint, and the issues thus joined having been duly brought to trial before Hon'l- William J. Kelly one of the Justices of this Court, at a Special Term thereof held at the Court House in the Borough of Brooklyn, County of Kings, on the 15th day of June, 1910, and the said Justice having duly made his findings of fact and conclusions of law therein wherein and whereby the following facts were found by said Justice, viz:

I. That the defendant Supreme Council of the Royal Arcanum is a corporation duly organized by and under the laws of the State of Massachusetts and that it has been duly admitted pursuant to the laws of the State of New York to transact business in said
50 State.

II. That said defendant Supreme Council of the Royal Arcanum is composed of different subordinate councils of which the defendant De Witt Clinton Council No. 419 of the Royal Arcanum an unincorporated association is one and of which the defendant Val M. Schmitz under the name of Regent is the president with full power to admit members thereto under the provisions of the by-laws

of the defendant Supreme Council of the Royal Arcanum which members when so admitted become members of said defendant Supreme Council with all the rights and privileges incident thereto.

III. That among the purposes for which said defendants were instituted is the provision for the payment of benefits to the beneficiaries of the different members of said defendants upon the decrease of such members.

IV. That in or about the month of May, 1883, the plaintiff duly made application unto the defendant De Witt Clinton Council No. 419 of the Royal Arcanum for membership therein and was duly accepted and initiated as such by and under the provisions of the by-laws of both of the defendants in this action.

V. That at or about the time of such admission the defendant Supreme Council of the Royal Arcanum issued its certificate unto the plaintiff bearing date the 21st day of June, 1883, whereby it promised to pay unto the beneficiary of the plaintiff upon the decease of the plaintiff a sum of money not exceeding the sum of Three thousand dollars upon condition among other things as provided in the by-laws of said defendants that he pay such assessments as under such by-laws were to be properly levied for the benefit of the Widows' and Orphans' Fund of said defendants; which assessments under said by-laws at that time on the basis of his age
51 was fixed to be paid by the plaintiff at the sum of $1–86/100 each.

VI. That afterwards in the year 1898 by an amendment made by the defendants to their by-laws which amendment was consented and agreed to by the plaintiff the amount to be paid upon each of the above mentioned assessments was changed to the sum of Three 16/100 dollars payable once in each calendar month by said plaintiff so long as he should remain a member of said defendants.

VII. That in the year 1905, the defendants without the consent of the plaintiff again changed and amended their by-laws whereby the assessment so to be paid by said plaintiff was changed to the sum of Six 87/100 dollars payable once in each calendar month.

VIII. That the plaintiff duly objected and protested to such amendment to the by-laws but to protect his rights and interests did pay the same under protest and under compulsion on the part of the defendants.

IX. That the plaintiff has duly tendered previous to the commencement of this action unto the defendants the sum of $3–16/100 as and for the assessment of said plaintiff due and payable in the month of February, 1910, which sum of money the defendants have refused to accept.

Now on reading and filing said findings and the conclusions of law thereupon and after hearing F. J. Moissen, attorney for the plaintiff and Henry A. Powell, Esq., of counsel for the defendants, It is hereby

Ordered and adjudged as follows:

First. That the contract made and entered into by and between the plaintiff and defendants is that the defendant Supreme
52 Council of the Royal Arcanum shall upon the decease of the plaintiff pay the sum of Three thousand dollars unto the

person designated by the plaintiff as his beneficiary providing the said plaintiff be then a member of the defendants.

Second. That the plaintiff shall pay unto the defendant the sum of Three 16/100 dollars once in each month with such additional assessment at the rate of $3.16 as may be lawfully imposed so long as he shall remain a member of the defendants as an assessment to the Widows' and Orphans' Benefit Fund or such fund as may hereafter be provided by the by-laws of said defendant for the payment of said sum of Three thousand dollars hereinabove mentioned.

Third. That the above named defendants their officers, agents and servants are hereby directed to accept and receive of and from the plaintiff, the above mentioned sum of Three 16/100 dollars once in each calendar month as his assessment upon his contract with the defendants as a member thereof.

Fourth. That upon the plaintiff paying or offering to pay the above mentioned sum of Three 16/100 dollars once in each calendar month until his decease the above named defendants Supreme Council of the Royal Arcanum, and De Witt Council No. 419 of the Royal Arcanum, the officers, agents, or servants thereof are hereby enjoined and restrained from suspending the plaintiff as a member of said defendants.

Fifth. That the amendment made by the defendants to their by-laws in the year 1905, changing the assessment to be paid by the plaintiff from the sum of $3.16 to the sum of Six 87/100 dollars is a violation by the defendants of the contract made by them with the plaintiff and as to him is absolutely void.

53 Sixth. That the plaintiff recover of and from the defendants the sum of One hundred and twenty-nine 30/100 dollars taxed by the Clerk of this Court as his costs and disbursements of this action.

Enter,

WILLIAM J. KELLY, *J.*

Granted, July 23d, 1910.
HENRY P. MOLLOY, *Clerk.*

HENRY P. MOLLOY, *Clerk.*

Defendants' Requests to Find.

Supreme Court, Kings County.

SAMUEL GREEN
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

Proposed Findings of Fact and Conclusions of Law Submitted on Behalf of the Defendants in the Above-entitled Action.

54 I

That the defendant Supreme Council of the Royal Arcanum is a fraternal beneficiary corporation, organized and existing under and pursuant to the laws of the Commonwealth of Massachusetts.

Found. W. J. K., J.

II.

That the defendant Supreme Council of the Royal Arcanum was organized on June 23rd, 1877, and that it was incorporated on November 5th, 1877.

Found. W. J. K., J.

III.

That the Supreme Council of the Royal Arcanum, as shown by its charter, was incorporated for the purpose of fraternal union, aid to its members and their dependants, the education socially, morally and intellectually of its members, assisting the Widows and Orphans of deceased members, establishing a fund for the relief of sick and distressed members, and one for a Widow'- and Orphans' Benefit Fund.

Found. W. J. K., J.

IV.

That the objects of the Order of the Royal Arcanum, as stated in its by-laws at the time when plaintiff became a member, were:

1st. To unite fraternally all white men of sound bodily health and good moral character, who are socially acceptable and between twenty-one and fifty-five years of age.

2nd. To give all moral and material aid in its power to its members and those dependent upon them.

3rd. To educate its members socially, morally, and intellectually; also to assist the widows and orphans of deceased members.

4th. To establish a fund for the relief of sick and distressed members.

5th. To establish a Widows' and Orphans' Benefit Fund, from which, on the satisfactory evidence of the death of a member of the order, who has complied with all its lawful requirements, a sum not exceeding three thousand dollars shall be paid to his family or those dependent on him, as he may direct, and that the objects of the Order, as stated in its by-laws, have continued without substantial change down to the present time.

Found. W. J. K., J.

V.

That the business of the Supreme Council of the Royal Arcanum is conducted in accordance with the statutory law of Massachusetts, on the lodge system, said lodges being known as "councils," and that said Supreme Council is the governing body thereof.

Found. W. J. K., J.

VI.

That the subordinate lodges or councils which are composed of members of the Order of the Royal Arcanum, are all governed by the by-laws of said Supreme Council of the Royal Arcanum, and that members are admitted to said subordinate lodges or councils upon application thereto, made in writing, and by initiation therein.

Found. W. J. K., J.

56

VII.

That the moneys collected into the Widows' and Orphans' Benefit Fund are used to pay beneficiaries of deceased members and for no other purposes whatsoever, and have not been used for any other purpose whatsoever since the year 1883.

Found. W. J. K., J.

VIII.

That the expenses of the defendant Supreme Council of the Royal Arcanum are borne by annual dues of 80¢ per member on the entire membership, by some profit from the sales of supplies, and by interest on such investment of its general fund as are accrued.

Found. W. J. K., J.

IX.

That the Supreme Council of the Royal Arcanum is not conducted for the profit of any person or persons.

Found. W. J. K., J.

X.

That the Order of the Royal Arcanum has a membership of about 245,000, and that its outstanding benefit certificates in the aggregate amount to about $500,000,000.

Found. W. J. K., J.

XI.

57 That the amount collected annually into the Widows' and Orphans' Benefit Fund is about $8,000,000, and that this is collected by assessments from members.

Found. W. J. K., J.

XII.

That the number of assessments levied and collected from the commencement of the Order, in 1877, down to and including the 31st day of December, 1909, were as follows, for each and every year:

1878.....3	1888.....14	1899.....12
1879..... 7	1889.....13	1900.....12
1880.....6	1890.....15	1901.....12
1881.....8	1891.....15	1902.....12
1882.....9	1892.....15	1903.....12
1883.....10	1893.....15	1904.....12
1884.....11	1894.....16	1905.....12
1885.....11	1895.....15	1906.....12
1885.....10	1896.....16	1907.....12
1886.....12	1897.....17	1908.....12
1887.....14	1898.....15	1909.....12

Found. W. J. K., J.

XIII.

That the defendant Supreme Council of the Royal Arcanum has paid out altogether, in death benefits, about $133,000,000.

Found. W. J. K., J.

XIV.

That the membership of the Supreme Council of the Royal Arcanum is composed of its officers, representatives from Grand Councils, and of past Supreme Regents; that the representatives from said Grand Councils to said Supreme Council are elected
58 by the members of Grand Councils, and that said Grand Councils are composed of the officers thereof and representatives elected to said Grand Councils from the subordinate or local councils of the Order.

Found. W. J. K., J.

XV.

That the by-laws of the defendant Supreme Council of the Royal Arcanum, at all times during the plaintiff's membership, have contained full requirements for the use of regalia, jewels, uniform, and ritual, and for the promotion of the social and fraternal features of the Order.

Found. W. J. K., J.

XVI.

That the defendant Supreme Council of the Royal Arcanum has been duly admitted, pursuant to the laws of the State of New York, to transact business in said State of New York.

Found. W. J. K., J.

XVII.

That plaintiff, in or about the month of May, 1883, made application in writing to become a member of De Witt Clinton Council No. 419, Royal Arcanum.

Found. W. J. K., J.

XVIII.

That in and by the terms of said application, he agreed to make punctual payment of all dues and assessments for which he might become liable, and to conform in all respects to the laws,
59 rules and usages of the Supreme Council of the Royal Arcanum then in force or which might be thereafter adopted by the same.

Found. W. J. K., J.

XIX.

That after said application plaintiff was duly initiated in said council and became a member thereof.

Found. W. J. K., J.

XX.

That in the obligation signed by plaintiff, on the 10th day of June, 1883, plaintiff solemnly promised that he would strictly comply with all laws, rules and usages of the fraternity established by the Supreme Council of the Royal Arcanum; that he would hold allegiance to said Supreme Council, and be loyal thereto as the supreme authority of the entire Order, and that said obligation is attached to the application for membership hereinbefore mentioned.

Found. W. J. K., J.

XXI.

That thereafter, and on or about the 21st day of June, 1883, the defendant Supreme Council of the Royal Arcanum issued to plaintiff a benefit certificate, wherein and whereby it was provided that, upon evidence received from De Witt Clinton Council No. 419 of the Royal Arcanum, plaintiff was a contributor to the Widows' and Orphans' Benefit Fund of the Order, and upon condition that he should comply, in the future with the laws, rules and regulations then governing said Supreme Council and fund, or that might thereafter be enacted by the Supreme Council to govern
60 said council and fund, the Supreme Council of the Royal Arcanum would pay out of its Widows' and Orphans' Benefit Fund to Louisa Green (wife), a sum not exceeding $3,000, upon satisfactory evidence of the death of plaintiff, upon the surrender of said certificate, and provided that plaintiff was in good standing in the Order at the time of his death, and further provided that the said certificate should not have been surrendered by plaintiff and another certificate issued at his request, in accordance with the laws of the Order.

Found. W. J. K., J.

XXII.

That at the time when plaintiff became a member of the Order, it was provided in the by-laws that the defendant Supreme Council of the Royal Arcanum should be known as the "Supreme Council of the Royal Arcanum" with power to make its own constitution, rules of discipline and laws for the government of the whole Order.

Found. W. J. K., J.

XXIII.

That at the time when plaintiff became a member of De Witt Clinton Council, No. 419, Royal Arcanum, it was provided in the *construction* and laws of the defendant Supreme Council of the Royal Arcanum, that the constitution of said Supreme Council and the laws governing the Widows' and Orphans' Benefit Fund might be amended by a three-fourths vote of the entire membership of said Supreme Council, at a regular meeting, or at a special meeting called for the purpose.

Found. W. J. K., J.

61 XXIV.

That from the time of plaintiff's reception into said De Witt Clinton Council, he paid assessments at the rate of $2.87 per assessment, and continued to pay assessments at the same rate until the year 1898.

Found. W. J. K., J.

XXV.

That prior to the year 1898, assessments were levied by the Supreme Council of the Royal Arcanum as follows:

Found. W. J. K., J.

XXVI.

That the rate of assessment paid by members of the Royal Arcanum, upon a Three-thousand-dollar certificate, as said for their contribution to the Widows' and Orphans' Benefit Fund, at the time when the plaintiff became became a member and down to 1898, were as follows:

("Here follows the table printed under paragraph 15 of the decision at page 40 and 41 of the transcript of the record, and on page 21 of the printed record.")

* * * * * * *

62 XXVII.

That after the year 1898, assessments were made payable monthly.

Found. W. J. K., J.

XXVIII.

That the rates of assessment paid by members of the Royal Arcanum, upon a Three-thousand-dollar certificate, as their contribution to the Widows' and Orphans' Benefit Fund, from the year 1898 to the year 1905, were as follows:

63 (Here follows the table printed under paragraph 1,000 of the decision at pages 41 and 42 of the transcript of the record, and on page 21 of the printed record.)

* * * * * * *

64 XXIX.

That from the year 1898 to the year 1905 plaintiff paid monthly assessments of $2.16 each.

Found. W. J. K., J.

XXX.

That in the year 1905, a change was made by said Supreme Council of the Royal Arcanum in its assessment rate and the assessment rate of plaintiff was changed from $2.16 to $1.67.

Found. W. J. K., J.

XXXI.

That prior to the year 1905, the question of a change of assessment rates was taken up by the executive committee of the Supreme Council of the Royal Arcanum, which consisted of eleven members, created pursuant to the laws of the Supreme Council of the Royal Arcanum; that William Francis Barnard, an insurance actuary, was consulted; that the statistics of the Royal Arcanum were submitted to him, and that from these statistics he formulated a table of rates; that at a regular meeting of the Supreme Council of the Royal Arcanum, in 1905, a report was presented by the executive committee of that body recommending the adoption of the rates of assessment formulated as aforesaid.

Found. W. J. K., J.

XXXII.

That upon said report there was a long discussion continuing four or five days.

Found. W. J. K., J.

65 XXXIII.

That said reports and rates of assessment therein recommended and now in force, were adopted by a vote of about 102 to 3.

Found. W. J. K., J.

XXXIV.

That the vote required at that time, under the laws, to amend the laws of said Supreme Council, was 77.

Found. W. J. K., J.

XXXV.

That in the year 1903, there was prepared a tabulation of the experience of the Order, which brought under consideration about 400,000 lives.

Found. W. J. K., J.

XXXVI.

That this tabulation was submitted by the defendant Supreme Council of the Royal Arcanum to the said actuary William Francis Barnard.

Found. W. J. K., J.

XXXVII.

That from said tabulation of experience, the said actuary, William Francis Barnard, prepared the rates of assessments adopted in 1905, as hereinbefore set forth.

Found. W. J. K., J.

66 XXXVIII.

That such rates actually represent the actual cost to the Order for the benefits promised to members of each age.

Found. W. J. K., J.

XXXIX.

That such rates of assessment, adopted in 1905, (actually and) equitably apportion the cost of protection among the members of the Order, according to age and risk.

Found, except matter in parenthesis refused. W. J. K., J.

XL.

That the changes made in the rates of assessment so adopted in 1905, were necessary to maintain the solvency of the Order and to enable it to meet its financial obligations in the payment of death claims.

Refused. I find that the increased revenues might have been obtained from additional assessments. W. J. K., J.

XLI.

That the rates of assessments adopted in 1905 do not provide for the collection of larger amounts of contribution than are absolutely necessary to maintain the solvency of the Order.

Refused. See Memo. 40th request. W. J. K., J.

XLII.

That the rate of assessment for age 60, provided for in
67 said assessment rates, adopted in 1905, does not require the payment of a larger contribution than the experience of the Royal Arcanum has shown to be necessary to pay the benefits promised.

Refused for the reasons above stated. W. J. K., J.

XLIII.

Assuming that the future experience of the Royal Arcanum will be the same as that upon which the rates adopted in 1905, were based, said rates will provide sufficient revenues to maintain solvency and enable the Order to meet all maturing mortuary obligations through the future.

Found. W. J. K., J.

XLIX.

The plan of assessments in force prior to the change of 1905 was faulty.

Refused. W. J. K., J.

L.

That the Royal Arcanum could not have met the maximum face value of its certificates permanently under the plan of assessments in force just prior to the change adopted in 1905.

Refused. W. J. K., J.

LI.

That the change of assessments adopted in 1905, was expedient and necessary.

Refused. W. J. K., J.

68 LII.

That the plan of assessments and rates adopted in 1905, was mathematically correct.

Refused, but I find that the aggregate amount of the assessments was the sum required to maintain the Widows' and Orphans' Fund. W. J. K., J.

LIII.

That assuming that the experience of the Royal Arcanum is the same as that of the first twenty-seven years of its existence, then, if the members of the Royal Arcanum pay the amount of assessments fixed in the assessment tables adopted in 1905, the Royal Arcanum can continue to pay the maximum face value on its certificates at their maturity.

Found. W. J. K., J.

LIV.

That the amounts of assessments fixed by the rates adopted in 1905 are not any higher than are necessary to enable the Royal Arcanum to continue to pay the maximum face value of its certificates at their maturity.

Refused. W. J. K., J.

LV.

That the assessment rates adopted by the Supreme Council of the Royal Arcanum in 1905, (fairly and) equitably apportion among the members their contributions to the Widows' and Orphans' Benefit Fund, taking into consideration age and risk.

Found except matter in parenthesis refused. W. J. K., J.

69 & 70 LVI.

That under the conditions which existed in the Royal Arcanum in May, 1905, it would not have been possible to permanently provide sufficient revenues to meet mortuary liabilities by calling extra assessments.

Refused. W. J. K., J.

LVII.

That the original plan of assessment adopted by the Royal Arcanum was not scientifically correct or practical, according to the experience of life insurance organizations and fraternal beneficiary organizations.

Refused. W. J. K., J.

LVIII.

That the rates of assessment adopted by the Supreme Council of the Royal Arcanum in the year 1905, for holders of a Three-thousand-dollar certificate, were:

(Here follows the table printed under paragraph LXVIII of the decision at pages 44 and 45 of the transcript of the record, and on page 23 of the printed record.)

* * * * * * *

71 LIX.

That the rates prescribed in the table of regular rates and Option A are the mathematical equivalents of each other.

Refused because unintelligible. W. J. K., J.

LX.

That subsequent to said regular meeting, and in the same year, a special session of the Supreme Council of the Royal Arcanum was called, owing to some dissatisfaction in the Order.

Found. W. J. K., J.

LXI.

That the call for this special session was published in a paper published by the Order and mailed to all members of the Order.

Found. W. J. K., J.

LXII.

That said special session lasted five or six days; that no other matters were taken up than the matter of rates, and that at said session these matters were discussed over again.

Found. W. J. K., J.

LXIII.

That at said meeting, the rates adopted at the regular session in 1905 were reaffirmed, excepting one table, which was taken out, and that said table, so taken out, does not appear in the laws of 1905 as received in evidence in this action.

Found. W. J. K., J.

72 LXIV.

That at said special meeting of the Supreme Council, its deliberations and hearings were not confined to members of the Supreme Council itself; that members of the Order were permitted to appear before said Supreme Council and express their views upon the question of rates of assessment, (and that numbers of members did so appear before said Supreme Council at said meeting).

Found except matter in parenthesis refused. W. J. K., J.

LXV.

That the amounts paid into the Widows' and Orphans' Benefit Fund by plaintiff were as follows, to-wit: at his first rate: $388.80; at his second rate: $271.76, and at his third rate: $370.98, making a total of $1,031.51.

Found. W. J. K., J.

LXVI.

That the aggregate amount of assessments which should have been paid for whole life protection, as shown by the experience of the Royal Arcanum, to provide for the obligation assumed in carrying a member under a Three-thousand-dollar-certificate, who joined at the age of thirty-eight and continued his membership twenty-six and a half years, is $1,411.92.

Refused. W. J. K., J.

LXVII.

That a member of the Royal Arcanum may at any time, when in good standing, upon payment of the fee provided, make a
73 written surrender of his benefit certificate and direct that a new certificate be issued to him, payable to such beneficiary or beneficiaries as such member may designate, according to the laws of the Order.

Found. W. J. K., J.

LXVIII.

That it is provided by the by-laws of the Supreme Council of the Royal Arcanum that no action at law or in equity in any court shall be brought or maintained upon any cause or claim arising out of any membership or benefit certificate, unless such action is brought within three years from the time when such right of action accrues, and that said provision has been a part of said by-laws since 1890.

Found. W. J. K., J.

LXIX.

That by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment.

Found. W. J. K., J.

LXX.

That under the law, as decided and determined by the courts of Massachusetts, the Supreme Council of the Royal Arcanum had power and authority to adopt rates enacted in 1905.

Refused. W. J. K., J.

74 LXXI.

That from the 1st day of October, 1905, to the 1st day of February, 1910, plaintiff paid assessments for the Widows' and Orphans' Benefit Fund, monthly, at the rate of $6.87 for each assessment.
Found. W. J. K., J.

LXXII.

That since the adoption of its amended assessment rates in 1905, the Royal Arcaunm has received about 63,000 new members, and there have been reinstated into its membership about 9,000.
Found. W. J. K., J.

Conclusions of Law.

I.

That under the contract entered into between the plaintiff and the defendant Supreme Council of the Royal Arcanum, the said Supreme Council of the Royal Arcanum had the power to make the changes complained of in the plaintiff's complaint.
Refused. W. J. K., J.

II.

That the legislation enacted by the defendant, the Supreme Council of the Royal Arcanum, in 1905, amending its by-laws by increasing the rates of assessment, was valid and binding upon the plaintiff.
Refused. W. J. K., J.

75 III.

That the plaintiff, by reason of his long delay in commencing his action, has been guilty of laches and is not entitled to the equitable relief demanded in his complaint.
Refused. W. J. K., J.

IV.

That plaintiff, by paying his assessments monthly at the changed rate adopted by the defendant, Supreme Council of the Royal Arcanum in 1905, from the 1st day of October, 1905, to the 1st day of February, 1910, has accepted the same and acquiesced therein, and is bound thereby.
Refused. W. J. K., J.

V.

That more than three years having elapsed between the 1st day of October, 1905, and the time of the commencement of this action, plaintiff, under his contract with the defendant, Supreme Council, is barred from maintaining the same.
Refused. W. J. K., J.

VI.

That the act of the defendant, Supreme Council of the Royal Arcanum, in changing its assessment rates in the year 1905, was an act of said Supreme Council in the management of its internal affairs, and, therefore, this Court will not interfere with the enforcement of such changed rates.

Refused. W. J. K., J.

76 VII.

That the defendant, the Supreme Council of the Royal Arcanum, being organized under the laws of the Commonwealth of Massachusetts, and having authority, under the laws of said Commonwealth, to enact the changes complained of in amending its assessment rates, the same must be recognized as lawful by the Courts of this State.

Refused. W. J. K., J.

VIII.

That the defendants are entitled to judgment herein dismissing the plaintiff's complaint, upon the merits, with costs.

Refused. W. J. K., J.

I therefore direct judgment accordingly.

77 *Exceptions.*

Supreme Court, Kings County.

SAMUEL GREEN, Plaintiff,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

The above named defendants, Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, except to the following Findings of Fact made herein by Hon. William J. Kelly, the Justice of this Court, before whom this case was tried, bearing date July 23rd, 1910.

I. To so much of the Finding of Fact numbered III as is contained in the following words, to wit: "and that said council is doing business in the Borough of Brooklyn, County of Kings, in the State of New York."

II. To the Finding of Fact numbered VII, and each and every part thereof.

III. To the Finding of Fact numbered VIII, and each and every part thereof.

IV. To the Finding of Fact numbered XI, and each and every part thereof.

78 V. To the Finding of Fact numbered XII, and each and every part thereof.

VI. To the Finding of Fact numbered XIV, and each and every part thereof.

VII. To so much of the Finding of Fact numbered XV as finds that the defendant, Supreme Council, has not appointed any person within this State to receive process for it or upon whom process for it might be served, as provided by the laws of the State of New York.

VIII. To Finding of Fact numbered XVI, and each and every part thereof.

IX. To the Finding of Fact numbered XVIII, and each and every part thereof.

X. To the Finding of Fact numbered XIX, and each and every part thereof.

XI. To the Finding of Fact numbered XX, and each and every part thereof.

XII. To the Finding of Fact numbered XXI, and each and every part thereof.

XIII. To the Finding of Fact numbered XXIII, and each and every part thereof.

XIV. To the Finding of Fact numbered XXV, and each and every part thereof.

Said defendants further except to the refusals of the said Trial Justice before whom this action was tried to find the proposed Findings of Fact and requests to find presented in behalf of said defendants, to wit:

XV. The refusal to find that part of the proposed Finding of Fact numbered XXXIX enclosed in brackets.

79 XVI. The refusal to find the proposed Finding of Fact numbered XL.

XVII. The refusal to find the proposed Finding of Fact numbered XLI.

XVIII. The refusal to find the proposed Finding of Fact numbered XLII.

XIX. The refusal to find the proposed Finding of Fact numbered XLIX.

XX. The refusal to find the proposed Finding of Fact numbered L.

XXI. The refusal to find the proposed Finding of Fact numbered LI.

XXII. The refusal to find the proposed Finding of Fact numbered LII.

XXIII. The refusal to find the proposed Finding of Fact numbered LIV.

XXIV. The refusal to find the portion of the proposed Finding of Fact numbered LV enclosed in brackets.

XXV. The refusal to find the proposed Finding of Fact numbered LVI.

XXVI. The refusal to find the proposed Finding of Fact numbered LVII.

XXVII. The refusal to find the proposed Finding of Fact numbered LIX.

XXVIII. The refusal to find that part of the proposed Finding of Fact numbered LXIV enclosed in brackets.

XXIX. The refusal to find the proposed Finding of Fact numbered LXVI.

80 XXX. The refusal to find the proposed Finding of Fact numbered LXX.

Said defendants also except to the Conclusions of Law contained in said decision, as follows:

I. To each and every part of the Conclusion of Law numbered First.

II. To each and every part of the Conclusion of Law numbered Second.

III. To each and every part of the Conclusion of Law numbered Third.

IV. To each and every part of the Conclusion of Law numbered Fourth.

V. To each and every part of the Conclusion of Law numbered Fifth.

Said defendants also except to the refusals of the said Trial Justice before whom this action was tried, to find the following proposed Conclusions of Law, submitted on behalf of the defendants, with the requests that the same be found, to wit:

VI. The refusal to find the proposed Conclusion of Law numbered I.

VII. The refusal to find the proposed Conclusion of Law numbered II.

VIII. To the refusal to find the proposed Conclusion of Law numbered III.

IX. To the refusal to find the proposed Conclusion of Law numbered IV.

X. The refusal to find the proposed Conclusion of Law numbered V.

XI. The refusal to find the proposed Conclusion of Law numbered VI.

81 XII. The refusal to find the proposed Conclusion of Law numbered VII.

XIII. The refusal to find the proposed Conclusion of Law numbered VIII.

Dated, August 4th, 1910.

FOLEY & POWELL,
Attorneys for Defendants.

206 Broadway, Manhattan, New York, N. Y.

To F. J. Moissen, Attorney for Plaintiff; and Henry P. Molloy, Clerk.

82 *Case.*

New York Supreme Court, Kings County.

SAMUEL GREEN, Plaintiff,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendants.

This action was tried before Hon. William J. Kelly, Justice, at a Special Term, held in and for the County of Kings, on the 15th day of June, 1910.

Appearances:

For Plaintiff, F. J. Moissen, Esq.
For Defendants, Arthur C. Salmon, Esq. (Henry A. Powell, Esq., of Counsel).

Mr. MOISSEN: Before I proceed, I would ask the Court to amend the third allegation of the complaint. The third allegation recites that it is for the purpose of providing for the payment of benefits unto the different members in case of their death. It should be to the "Beneficiaries of the different members in case of their death."

Mr. POWELL: No objection.

Motion granted.

83 SAMUEL GREEN, 190 McDonough Street, Brooklyn, called as a witness in his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. MOISSEN:

I am the plaintiff in the action. I applied to De Witt Clinton Council to become a member of the council in the year 1883. The application was in writing, on one of their printed forms.

Mr. MOISSEN: Will you produce that application?

Mr. POWELL: We produce it.

By the COURT: De Witt Clinton Council No. 419 of the Royal Arcanum."

By Mr. MOISSEN:

This is the application, and the signature, "Samuel Green," at the bottom is mine.

Offered in evidence and received and marked Exhibit 1.

After that application I was initiated in the council, and some time after that I received a certificate. I have the certificate with me.

Offered in evidence and received and marked Exhibit 2.

At the time I made the application I paid to someone representing the Council whatever was the medical examiner's fees, and subsequently the amount of one assessment in advance and whatever there might have been in the way of any little charges or dues—whatever they required was paid. I mean I paid dues to the Council and an assessment, and whatever else was required. The amount of the assessment, at that time, my recollection, if it serves me, was
84 $1.87. I continued to pay that assessment until the assessments were compounded in 1898. In 1898 the assessment was changed in number and amount. Previous to 1898 the assessments were levied as deaths occurred. After 1898 the assessments were payable monthly.

By the COURT:

My certificate is dated 1883.

By Mr. MOISSEN:

The assessment that I paid in 1898, under their amendment, in 1898 to 1905, was $3.16 per month. Then in 1905 a change was made in the amount, October—taking effect in October. The change was from the $3.16 to $6.87, and notice that it would be $16.08 after I should attain the age of sixty-five, if I lived so long and remained in the order.

Mr. POWELL: I move to strike out, "A notice that when I reached the age of sixty-five," on the ground that it is immaterial and incompetent and irrelevant and anticipating the future, and not complained of in this complaint.

The COURT: Is there any dispute about the fact of the notice?

Mr. POWELL: Oh, no.

Objection overruled. Exception taken.

Mr. POWELL: And I move to strike that out, if your Honor will permit the motion now, upon the ground that there is no allegation of that character in the complaint.

The COURT: I will not pass on the legal effect of it, but I think, as a transaction between the assured and the corporation, I will admit it, and give you an exception.

Mr. POWELL: Your Honor simply admits it for that purpose?

The COURT: That is all.

85 Q. When will you be sixty-five?

Mr. POWELL: Objected to as immaterial, irrelevant and incompetent.

Objection overruled. Exception taken.

A. The 19th of November, 1910.

My name appears at the bottom of this certificate. That is my signature, signed by me in the council room of De Witt Clinton Council.

By the COURT:

That is in Brooklyn.

By Mr. MOISSEN:

I was a resident of Brooklyn at that time, and am now. I have continued to be a resident, and am still a resident of Brooklyn.

Q. Previous to this last raise in 1905, did you receive any notice from the Supreme Council of their intention to increase that rate?

Mr. POWELL: Objected to as immaterial, irrelevant and incompetent.

Objection overruled. Exception taken.

A. Only so far as it was a matter of public note, not from the Council itself.

By the COURT:

Q. You say from the Supreme Council. Did you receive any notice from anybody?

Exception to defendant.

A. No notice from anyone.

By Mr. MOISSEN:

Q. Did you consent to this increase at any time?

86 Mr. POWELL: Objected to as calling for a conclusion and characterization by the witness himself of what he did.

Objection overruled. Exception taken.

A. I did not.

The COURT: I understand he is asked did he consent by affirmative action on his part.

Mr. MOISSEN: Yes, sir.

The COURT: Not by operation of law.

Mr. MOISSEN: No, sir.

Q. Did you upon the floor of your Council make any statement whatever relative to this increase?

Mr. POWELL: Objected to as irrelevant, immaterial and incompetent.

The COURT: I do not know that it would make any difference, but I think if he objected in the Council, I will take it, and I will pass on its binding force on the Supreme Council, if it has any, about which there is a good deal of doubt, in deciding the case. But, as affecting his equities, I will allow him to state that he previously, on the floor of his Council, objected to the increase, if he did object.

Mr. POWELL: I except to the ruling.

Q. And did you make any statement in Council relative to that increase of assessment in 1905?

A. Objected most strenuously.

Mr. POWELL: I move to strike that out.

The COURT: I will strike out the adjective.

I made this objection in my council from the time it was first proposed, and from that time until the present.

87 By the COURT:

Q. Do you mean when you received a notice of the increased assessment?

A. When it became a matter of public notice—not that I had received a notice of it, your Honor.

I did not receive any notice of an assessment at the increased rate. Only in a general way when it was proposed. I afterwards received my notice as to the amount of my assessment as increased. After receiving the notice of amount of my assessment as increased, I objected to paying it.

By Mr. MOSHER:

Notices of assessment are sent by mail. I received all those notices by mail continuously. I pay them to the Collector, as required by the laws of the order. The collector of De Witt Clinton Council.

By the COURT:

This is a notice received by me from the Collector of my council, of an assessment, calling for the payment of an assessment.

Mr. MOSHER: I will offer this notice produced by the witness, in evidence.

Mr. POWELL: I object to that as immaterial, irrelevant and incompetent, and not sufficiently establishing or tending to establish any protest on the part of this plaintiff as the evidence is at the present time.

By the COURT:

This is a notice of an assessment, received by me, I think, in January. The notices were received—there it is, your Honor. I probably received that on the 8th day of January, 1910. That is the way the collector sends—about eight days after they are due.

88 Objection overruled. Exception taken.
Same received and marked Exhibit 2.

By Mr. MOSHER:

Previous to the receipt of this notice that I handed you, I received one like it every month from October, 1905, up to and including that one, every month. Every one of the notices, when I paid them to my collector, had noted upon their face the same as this notice is noted, precisely. The other notices I destroyed, as not necessary to be retained.

The COURT: Is there any protest on the notice?

Mr. MOSHER: It is marked, "Paid under protest—S. C."

By the COURT:

I wrote that on it.

By Mr. MOSHER:

About the 1st day of February, I addressed a letter to the Collector of my council, containing an enclosure.

The Court: The 1st day of February is what year?

Mr. Munroe: 1910, this year.

I received a letter from the collector afterwards. It contained the enclosure I had in my previous letter.

Offered in evidence, received and marked Exhibits 4 and 5, respectively.

I have a copy of the letter that I sent to the collector.

Mr. Munroe: I will offer that copy in evidence.

60 *The Court: Is this the letter to which the former exhibit is an answer?*

Mr. Munroe: Yes, sir.

Mr. Powers: I object to this on the ground, in the first place, that any communication sent by plaintiff to the collector of a local council can have no bearing upon the issue in this case, the issue being between him and the Supreme Council; on the further ground that this letter was not sent until the 1st day of February, 1910, more than five years, or nearly five years, after the time when his cause of action accrued, according to the witness's own testimony, and therefore it is immaterial, irrelevant and incompetent.

Objection overruled. Exception taken.

Same received and marked Exhibit 6.

By Mr. Munroe:

My letter speaks of "W. and O. B. Fund." That is the Widows' and Orphans' Benefit Fund, as stated in all the papers in the order.

By the Court:

My certificate calls for a sum not exceeding $5,000.

Cross-examination by Mr. Powers:

During my membership in the Royal Arcanum I have been a delegate from my local council to the Grand Council of this State. The Grand Council is composed of delegates elected from all local councils, and then certain permanent members or members of committees of the Grand Councils. Then from the Grand Councils of the various States delegates are elected to the Supreme Council.

69 *Q. I hand you what seems to be two or three copies bound together and ask if this part of the book, the latter part, does not contain the constitution and laws as they were at the time when you became a member of the Order?*

A. I am not competent to answer that question without having such as I had at that time before me.

Same marked Exhibit 7 for identification.

Prior to 1899 my assessment was $1.87, as my memory serves me. Assessments were called at irregular intervals at that time. In 1899 my assessment was changed from $1.87 to $2.10. Then assessments were made payable monthly. I paid the monthly light along after that up to the time when the change was made in 1902.

Q. Before this change was made in 1905, there was a general discussion, was there not, among members of the order, as to the condition of the order and as to the prospect of changing?

A. A matter of public notoriety.

It was talked all over among the members and at the councils, so far as I went to councils. The Widows' and Orphans' Benefit Fund is a fund that is maintained in the order for the sole and distinct purpose of paying the amounts provided for under the certificates, to beneficiaries of deceased members.

I don't know that all the expenses of the order are paid out of moneys that are raised by assessments. As I understand it they are paid by what they call dues that are collected.

I was a member of the Supreme Council, elected from the Grand Council of this State, as my memory serves, from 1891 to 1895 or 1896. During those years I attended the sessions of the Supreme Council and was present through their deliberations.

The plaintiff rests.

91 ALFRED T. TURNER, Brookline, Mass., called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. POWELL:

I am a member of the Royal Arcanum. I joined the order in 1878. I have held office in the order. I have been a representative at the Supreme Council. I first became a representative to the Supreme Council in 1884. I am a member of the Supreme Council now. I have been a member of it during all that interim. I have attended all the sessions of the Supreme Council during that time. I have held the office of the Supreme Auditor. I was elected to that office in 1893. As Supreme Auditor I approved all demands made on the General Fund of the Order, kept records of the same, and no drafts were drawn without my approval. I continued to be Supreme Auditor until 1906. In 1903 I was appointed to the office of Supreme Secretary, and from that time I have continued to be Supreme Secretary of the order. As Supreme Secretary of the order I have charge of the records and accounts, I draw all drafts on the W. and O. B. and General Fund-.

Q. You use that expression, "W. and O. B." You mean Widows' and Orphans' Benefit Fund?

A. Widows' and Orphans' Benefit Fund, and General Fund, and I have charge of the levy and collection of the assessments for the Widows' and Orphans' Benefit Fund, I receive all the applications of the order, and issue all its benefit certificates. I receive all application- for membership. I receive all those; those are all received in my office. They are all under my control there—all these papers. I have been a member of the Executive Committee of the Order. I have been a member of that committee since its organization,
92 about fifteen years ago. In the secretary's office there is kept a record of each member of the order, a complete record.

By the COURT:

We have a list of members in the office.

By Mr. POWELL:

Q. What information is contained in regard to them in those lists that you keep?

Objected to by Mr. Moissen.
Objection sustained. Exception taken.

That list is kept by books of register and by card system.

Q. And what information is kept in that record with reference to the members and each and every of them?

A. Full information regarding the member's birth, age, occupation, everything pertaining to him on his entrance into the order, his suspension, if he is suspended, his death, when death occurs. In fact, full and complete information, and the date of admission to the order, everything. The Royal Arcanum was organized June 23, 1877. It was incorporated November 5, 1877.

Mr. POWELL: I offer in evidence a certified copy of the Charter of the Royal Arcanum, certified by the Secretary of State under the Seal of the Commonwealth of Massachusetts.

Same received and marked Exhibit B.

The membership of the Royal Arcanum at the present time is about 245,000, in round numbers. The outstanding benefit certificates aggregate about $500,000,000. The order extends with its local councils in all parts of the United States and Canada,
93 excepting those parts of the United States which are prescribed on account of the high death rates. There is collected in the Widows' and Orphans' Benefit Fund in the vicinity of $8,000,000 a year. That is collected through the subordinate councils, under what are known as assessments. This money which is received into the Widows' and Orphans' Benefit Fund is used to pay the beneficiaries of deceased members. It is used for no other purpose whatsoever. Since 1883 it has never been used for any purpose other than paying the beneficiaries of deceased members. The expenses of the Supreme Council are borne by dues of eighty cents per member on the entire membership, by some profit from the sales of supplies, and by interest on such investments of its general fund as accrue. There has been paid out altogether by this order in death benefits about $133,000,000.

Q. Its conduct is on what is known as the Lodge System—that is, the lodges being called councils.

A. We call them councils.

The local affairs—that is, the affairs of the council itself are governed by officers elected by those subordinate councils. This organization is not conducted for the profit of any person or persons, none whatever.

Q. And do you know what the percentage of cost of maintaining the order is with reference to amounts received and paid out?

Objected to by Mr. Moissen.

Objection sustained.

The COURT: I am going to assume that it is a perfectly praiseworthy organization, that it is conducted honestly and properly, and you do not need to introduce evidence to that effect at all.

Mr. POWELL: I except to the ruling, your Honor. The latter part of this book is the constitution and laws governing the
94 Royal Arcanum, its Supreme, Grand and Subordinate Councils, for the year 1883.

Mr. POWELL: I offer it in evidence.

Mr. MOISSEN: No objection.

Exhibit A for identification is received in evidence.

This book which you hand me is the same thing for the year 1898, and contains the laws, as amended, with reference to rates in 1898.

Offered in evidence and received and marked Exhibit C.

Prior to 1905, the question was taken up among the officials of the order, the officers of the Supreme Council, as to change of rates. It was under consideration by the Executive Committee of the order. The Executive Committee consists of eleven members nominated in the law, consisting of the Supreme Regent, the Supreme Vice-Regent, Supreme Orator, Past Supreme Regent, Supreme Auditor, Chairman of the Committee on Laws—I am stating the composition at that time—Chairman of the Supreme Trustee, the Elective Member—a member elected from the Supreme Council—There were about eleven members of this committee at that time. Actuaries were consulted, Mr. William Francis Barnard of New York—Syracuse and New York. Statistics of the order were submitted to him. From those statistics he calculated out a table of rates. The Executive Committee at the meeting of the Supreme Council in 1905, presented a report. That meeting was held in 1905 at Atlantic City, New Jersey.

By the COURT:

That was a meeting of the Supreme Council.

By Mr. POWELL:

That was a fully attended meeting.

95 Q. I hand you this paper and book, and direct your attention from page 381, beginning with 381, down to and including page 404, and ask you if that is the report that was made by the Executive Committee to the Supreme Council.

A. It was.

Offered in evidence and received and marked Exhibit D.

After this report was presented to the Supreme Council there was discussion upon it. That discussion continued four or five days—five days, I think. Finally it was adopted. It was adopted by a vote of 102 or thereabouts, to 3. The vote required at that time to amend, under the laws—to amend the constitution, was seventy-

seven. Subsequent to that time, and in the same year, there was called a special session of the Supreme Council. The opposition to these rates that had been adopted by the Supreme Council was what led to the calling of that special session. In other words, there was some dissatisfaction in the order. A call was sent out for that special session, issued from the Supreme Secretary's office, sent to the Grand Councils, to the members of the Supreme Council, and generally to officers of the Subordinate Councils and the Grand Councils. At this time a paper was published by the order. The call was published in that paper. The paper was mailed to all members of the order—the call.

Q. Now, I direct your attention to pages 563, 564, and the end of the statement covered by those pages at 565, and ask you if that is the call that was sent out for the special session?

The COURT: The special session of what?

Mr. POWELL: Of the Supreme Council.

Q. Where was this meeting held?

A. Put-in-Bay, Ohio.

96 Q. Was that call sent out?

A. I presume that it was; I have no——

Mr. POWELL: I offer it in evidence.

Same received and marked Exhibit E.

By the COURT:

A copy of that notice was published in the Royal Arcanum Bulletin, which paper is sent to every member of the order.

By Mr. POWELL:

The Supreme Council was in session there at Put-in-Bay some five or six days. No other matters were taken up than this matter of rate. And at this meeting these matters were discussed over again. The result of that meeting with reference to rates and so on was that the rates were reaffirmed, excepting one table which was taken out. And that table does not appear in the laws of 1905, as offered in evidence. In other words, it contains everything as completed at the special session. This meeting of the Supreme Council was not confined, in its deliberations and hearings, to members of the Supreme Council itself.

Q. State what the fact was with regard to that, Mr. Turner?

A. Any member was invited to appear before the Supreme Council and state his reason for his dissatisfaction. Members did appear before the Supreme Council. There would not be what you call many, and there were more than a few. They were heard, given full opportunity to present their views. I could not say clearly whether or not any of these people who appeared, other than members of the Supreme Council itself, represented associations and organizations of members. There was a report of a committee to whom this matter was referred, made at the Put-in-Bay meeting.

97 Q. Now, I direct your attention to pages 580, 581, 582 and 583, and ask you if that is the report?

A. It was.

Mr. POWELL: I offer this in evidence.
Same received in evidence and marked Exhibit F.

There is a record kept in the books of my office showing the amounts of money which have been paid by each individual member.

Q. Are you able to tell us from those records how much was paid by Mr. Green, the plaintiff here, when he paid at the rate of $1.80 an assessment?

A. Not from memory.

Q. Have you any memorandum which will refresh your memory?

A. I have the same memorandum which I have stated. The figures therein have been vouched for and examined by Mr. Bruce, the Chief Clerk. He is here in court. He went over those figures and examined them.

I was present at the sessions of the Supreme Council, when Mr. Green, the plaintiff, was a member of the Supreme Council. He took a decided interest. He was in the habit of speaking and taking part in the deliberations.

Q. Did he, while he was a member of the Supreme Council, ever take any step, introduce any motion, or there discuss the advisability of amending the provision of the law which limits the time within which action shall be brought against the defendant by members?

Objected to by Mr. Moissen.
Objection sustained. Exception taken.

The book which you hand me is the Code of the constitution and laws governing the Royal Arcanum for the year 1905. That contains the laws as they were after the meetings of sessions at
98 Put-in-Bay and Atlantic City, of which I have spoken.

Mr. POWELL: I offer in evidence the by-laws of the Royal Arcanum for the year 1905.

Same received in evidence and marked Exhibit G.

Q. I direct your attention, Exhibit G, to Section 473, and ask you how long that Section has been a part of the laws of the order?

A. That amendment was placed in the law in 1890, and it has been continuously a part of the law since that time.

Cross-examination by Mr. MOISSEN:

I have read section eight of the constitution of the Supreme Council.

Q. What is this book now shown you?

A. That is a Code of the Constitution and Laws of the Royal Arcanum governing the Supreme, Grand and Subordinate Councils and members, for the year 1904.

Same offered in evidence by Mr. Moissen.
Received and marked Exhibit 7.

This book that has been produced to me, where parts have been

shown me is published by the Supreme Council of the Royal Arcanum. It is done under my supervision. That book or any part of that book is not sent to any of the members individually in the sense that the bulletin is. It is subject to—it is sent to Subordinate Councils and members of the Grand Councils and to all those who desire a copy. But unless they desire a copy this is not sent, not to the whole membership. The call for the meeting at Put-in-Bay was sent to all the members of the order. To every member in the order. I know it was sent by the general knowledge of what is done in the office. I was not in the office at that time. I told you that before.

99 CHARLES F. BRUCE, Boston, Mass., called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. POWELL:

I am a member of the Royal Arcanum, and have been a member of it since 1880. I am in the office of the Supreme Secretary, and have been employed in that office about thirty years. In the office I have charge of the records and account and of the statistical work. In 1903, under the direction of the Executive Committee, I prepared or had prepared a tabulation of the experience of the order. That tabulation was based upon the record of the membership then in good standing, and those who had been members, so as to get the complete record down to December 31, 1903. All of those things were included in this tabulation made from the record, and this tabulation was correct. This tabulated statement was based upon the experience of 400,000 lives, including these elements that I have already mentioned. This tabulated statement, based upon the experience of these lives, which I have testified to, was submitted by the defendant to Mr. W. F. Barnard, an insurance actuary.

Q. Can you tell us, commencing with 1877 the beginning of the order, and running down to 1897, the number of assessments that were called each year and the number of members that there were for each year?

A. I could not from memory. I have a list, myself, that shows it correctly.

Mr. POWELL: I offer that list in evidence.

The COURT: I will take it. I think it is already in.

Same received in evidence and marked Exhibit H.

100 By Mr. POWELL:

I have made a computation of the amounts of money that were paid in by the plaintiff, Mr. Green, under his first rate of assessment, under his second rate of assessment, and under his third rate of assessment. Under the first rate $388.80; under the second rate $271.76, under the third rate, through assessment 403, $370.98; a total of $1,031.51. Approximately, the number of new members received into the Royal Arcanum since the amended rates of 1905

went into effect, was 63,000, and of suspended members restored since that time 9,000.

Cross-examination by Mr. MOISSEN:

By the COURT:

I should estimate about 20,000 members were suspended on the first assessment at the new rate. I should say about 3,000 of those, I think, came back; were restored.

By Mr. MOISSEN:

In the Arcanum on the 1st day of October, 1905, there were about 315,000 or 316,000 members. In 1905 I was in the Supreme Secretary's office. I had a hand in the figures published in the Bulletin. The Bulletin is a paper which is published by the order and sent to all the members. In the month of November, 1909, there were about 242,000, or 243,000 members in the Royal Arcanum, I should judge.

101 WILLIAM FRANCIS BARNARD, Syracuse, N. Y., called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. POWELL:

I am a member of the Royal Arcanum, and have been over five years. I have made a study of life insurance, the technical, mathematical, actuarial sides. I have studied those phases of life insurance about twenty-four years. I have done actuarial work, that is, in adjusting and readjusting and making out tables of rates. For the last twelve years, about, I have performed work of that character for The Knights of Honor, the Missouri Jurisdiction of the Ancient Order of United Workmen, the Improved Order of Heptasophs, Loyal Association, Protected Home Circle and a number of others—Safety Fund Insurance Society, I recall; Odd Fellows' Mutual Life. That is another, and there are a number of others. I have written and published a number of articles upon those subjects. I was employed by the Royal Arcanum to construct a graduated mortality table, based upon the actual experience of the order from the date of its organization in 1877 down to December 31, 1903, and to compute rates therefrom, and commenced doing that work early in February of 1905. I made that calculation on the basis of the statistics furnished me from the Royal Arcanum.

Q. Explain briefly the method employed in ascertaining the mortality experience of the order from 1877 to 1903?

A. The experience of the Royal Arcanum, from its organization in 1877 to 1903, was compiled by a card system, a card being made out for every member who had ever entered the order. The card contained data, such as the age——

Q. You may continue, Mr. Barnard.

102 A. After the entire history of the order—that is, of every individual member of the order, had been compiled on cards year by year, the experience was first grouped according to

ages of entry, or rather, to years of entry, separately, 1877, 1878, 1879, and so on. These groups were then sorted into ages of entry, twenty-one, twenty-two, twenty-three, twenty-four and so on. Afterwards they were sorted with reference to whether they had elapsed or died, or were still in the membership of the order. After those groupings were made of the cards, they were tabulated, each year's experience on a separate sheet. The entrants of 1877, for example, were tabulated according to ages of entry, any who may have lapsed or died in 1877 were noted, and the balance carried forward into the second year at an age one year higher. Those who may have lapsed or died after the original entrance, in their second year, were noted, and the balance again carried forward into the third year at an age two years higher, and so on. That was done separately for every year of insurance—for every year of issue. That whole experience was then compiled into a single exhibit, which gave the entire history of the order with reference to the number exposed to risk of death, at every attained age, running from age twenty-one to something over eighty. It covered over 399 000 lives, of whom a little over 29,000 had died, a little short of 87,000 had lapsed, and 283,000 plus were still members of the order. Having stated, with reference to actual age, the number dying at each age, by dividing the one into the other you obtained the probability of death. The actual cost to the order for obligations assumed for each age as shown by that experience, was ascertained. I also deducted and prepared a schedule of rates of assessments to and including age sixty-five, based upon the mortality and lapse experience of the order that I have described. The rates of assessment prepared by me were the rates adopted by the defendant, the Supreme
103 Council of the Royal Arcanum, at its annual session in 1905.

In my opinion, such rates actually represent the actual cost to the order for the benefits promised to the members of each age.

By the COURT:

By the benefits promised I mean the amount payable under the certificate. I do not take any other benefit into consideration. I mean the amount due under the certificates.

By Mr. POWELL:

In my opinion, such rates of assessment accurately equitably apportion the cost of protection among the members of the order according to their age and risk. In my opinion the changes made and rates adopted in 1905 were necessary to maintain solvency and enable the order to meet its financial obligations in the payment of death claims. In my opinion the present rates of assessment do not provide for the collection of larger amounts of contribution than is absolutely necessary to maintain solvency. In my opinion the present rate of assessment for age sixty do- not require the payment of a larger contribution than the experience of the order, which I have described, has shown to be necessary to pay the benefits from it. The aggregate amount of assessments which should have been paid for whole life protection, as shown by the order's experience,

to provide for the obligation assumed in carrying a member under a $3,000 certificate who joined at age thirty-eight and continued his membership twenty-six and one-half years, was $1,411.92.

Assuming that the future experience of the order will be the same as that upon which the present rates are based, that is, from 1877 to the close of 1903, in my opinion they will provide sufficient revenues to maintain solvency and enable the order to meet
104 all maturing mortuary obligations throughout the future.

In my opinion the plan of assessment enforced prior to the change of 1905 was faulty. In my opinion the order could not have met the maximum face value of its certificates permanently under it. In my opinion a change was expedient and necessary. In my opinion the plans adopted in 1905 were mathematically correct. In my opinion, assuming that the experience of the order is the same as that of the first twenty-seven years, if the members pay the amounts fixed in the tables adopted, the order can continue to pay the maximum face value of its certificates at their maturity. In my opinion such amounts are not any higher than necessary for this purpose. In my opinion those rates fairly and equitable apportion among the members their contributions to the Widows' and Orphans' Benefit Fund, taking into consideration their age and risk.

No cross-examination.

ABB LANDIS, Nashville, Tenn., called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. POWELL:

My occupation is that of Actuary, and I have been practicing that, especially as to fraternal societies, four years. During the last fourteen years in the work of an actuary. I have been called to advise sixty-eight different fraternal societies in the United States and Canada and made rates for their contributions and advised them concerning their readjustments. I have written works on that subject or similar subjects. In the course of my investigation I have made myself familiar with the various plans and
105 schedules of assessment that have been adopted by the Royal Arcanum from its organization, namely, the plan of schedule of rates in force from the beginning of the order until 1898, the schedule of rates adopted in 1898 and the schedule of rates and plan adopted in 1905. I was called upon to examine and pass upon and verify the schedules of rates adopted 1905. I went over all the calculations made by Mr. Barnard, his methods, and verified them.

Q. State in that connection what was the extent of the mortuary experience used in the preparation of these tables, as compared with the experience upon which other mortality tables have been based?

A. Approximately 400,000 lives were covered in the experience of the Royal Arcanum. A standard table used in this country, the American Experience, was from 76,000 lives of the Mutual Life. The Actuaries' Combined Experience, another standard table used by the States, was from seventeen British and Scottish companies, with

less than the combined lives used in the Royal Arcanum experience. There are other experiences, but those are the ones used in this country, the American Experience Table and the Actuaries' Combined Experience.

In my opinion the rates of contribution adopted by the Royal Arcanum in 1905, which I say I have examined and verified in regard to the accuracy of their computation, reflect the actual cost to the order for the benefits promised for members at each age according to its past experience.

In my opinion such rates of assessments correctly and equitably apportion the cost of protection among the members of the order, according to age and risk. In my opinion, the rates which were adopted in 1905 were necessary to maintain solvency and enable the order to provide for its financial obligations and the payment of death claims.

106 Q. You may state the reasons for that conclusion.

A. In 1905, when this change was made, the rates adopted in 1898 were in force. Those rates, while accumulating some surplus in the early years, were no more than term rates, and they were inadequate for whole life protection. Therefore, some change was necessary. In my opinion the present rates of assessment do not provide for the collection of a larger amount of contribution than is absolutely essential to maintain solvency. In my opinion, the present rate of assessments, at age sixty, does not require the payment of a larger contribution than the experience of the order, which I have described, has shown to be necessary to pay the benefits promised. In my opinion, taking into consideration the conditions existing in the Royal Arcanum in May, 1905, it was not possible to permanently provide sufficient revenues to meet mortuary liabilities, by calling extra assessments.

Q. Will you explain to the Court the inefficacy of the extra assessment plan?

A. When extra assessments are charged it makes an unequal tax upon members. Those members who are at young ages and of recent admission are overtaxed, and those members who are of advanced age and of long duration of membership are undertaxed. The result is that in the course of the operation the members who are at the younger ages will advance into the older ages, and then they become undertaxed because of the insufficiency of the rates.

By the COURT:

Q. You are assuming that they keep increasing rates indefinitely?

A. No, I assume that the members who enter in at the younger ages advance into the older ages, and then the rate of payment is insufficient to meet the cost of protection, and that results in the necessity of calling other extra assessments, because these

107 members pass into the higher ages where the cost of protection is greater. The calling of extra assessments aggravates the situation, because that much more overburdens the recent entrants and the members at the younger ages, until the result is that the cost of the protection—I mean the contribution that is

required of these young and recent entrants is greater than they could obtain in other organizations. When that point is reached they will neither come in nor can you retain the young members because of the competition. When that is done you lose the members, and when you lose the young members with their surplus contributions, that requires other extra assessments, and the other extra assessment drives out more, and the result is that you have accumulative deficiencies that must be met by continued extra assessments. Now, then, finally this comes to the point where it becomes prohibitive—the contributions that are required of them under that process of levying extra assessments.

By Mr. POWELL:

I can illustrate that by concrete figures. We will take three members, one entering at twenty-one, and their assessment laid on $3,000. under the old rate, of which we are speaking, was $1.76; take another member who has just entered at age forty, with $4.72 for $3,000; take a third member who entered at twenty-one who has attained the age of forty-six, having been twenty-five years in the Order. His assessment will be $1.76. The number of the assessments, to provide for the cost of the protection according to the experience of the order, would be approximately seven on the two new entrants, the one at twenty-one and the one at forty-six, with the rate of $1.76 and $4.72. The member who had been twenty-five years in the order and had attained age forty-six, the cost of his protection being somewhere about twenty-five dollars for the
108 year, would require fourteen assessments. Now, you have, with those three members, one who has been twenty-five years in the order having the same amount of protection and the same cost of protection, with less than half of the contribution. With respect to the other member, the younger entrant, he has the same amount of protection, but the cost of the protection is less than half. Therefore the inequality of the extra assessment method, and the final result on account of the inequality and discrimination—the final result in all cases—I have examined a great many, and I have never found a case where it did not result in the situation I have described.

Q. In the history of fraternal benefit societies operating upon inadequate rates of assessment has the experience of the past demonstrated that there comes a time when permanency cannot be assured and accomplished by readjustment of rates of assessment?

Objected to by Mr. Moissen.
Objection sustained. Exception taken.

There is a difference in fact as to the principle involved between an increase in the rates of assessment and a reduction in the amount of benefit. The amount of loss in benefit to the beneficiary is much greater than the amount that would be suffered by the member in the increase of his rate; that is, it would be for a great number of years, the number of years being determined by, of course, the age of the member when the rate was changed or when the reduction

was made in the benefit. That can be illustrated by concrete figures. I have taken from the actual rates a case where the member has paid, at age thirty-eight, according to the figures I have from the original rate, say $3.26 for $3,000 under the 1898 schedule. A member who has attained the age sixty under the regular rates adopted in 1905 would pay $6.87. To increase the rate from
109 $3.26 to $6.87 would be 111 per cent increase. To decrease the protection to correspond with the rate of $3.26 would be 52.6 per cent. In other words, a member who paid $3.26 would pay $39.12 a year, while, if his rate were increased, he would pay $82.44, making an increase of $43.32. If his protection was reduced from $3,000 to correspond with the rate of $3.26, he would receive $1,422 or a loss in the protection of $1,578. If that member were to die in the first year he would have paid, in the increased contributions, $82.44, and his beneficiaries would receive $3,000. If he had continued at the decreased rate and reduced protection he would have paid $39.12 in the year, and his beneficiaries receive $1,422. In other words, he would have paid in the one case $43.32 during the year and his beneficiary receive $1,578 more in protection. So in ten years that would be a net difference of $1,144. And in those two cases, if that member were to pay for about twenty-three years and improve the compound interest, then the amount of his extra payments would equal about the extra amount of benefit. He would have to live for twenty-three years, or somewhat more than eight years beyond his expectancy, for the increase in the rate to equal the difference in the protection of $3,000 and $1,422. The original plan of assessment adopted by the Royal Arcanum was not scientifically correct or practical according to the experience and principles developed in the business conduct of life insurance organizations and fraternal beneficiary organizations. The 1898 rate was virtually a rate for temporary protection as adopted in 1898, and it was inadequate for whole life protection. It was not adequate for whole life protection on twelve assessments a year because it did not provide enough in the contribution; it was inadequate; it was not anything but a term rate.

110 Cross-examination by Mr. MOISSEN:

Q. Will you tell me the difference between the rate of 1898, as adopted in 1898, and the rate immediately before?

A. Yes, sir; the rate immediately before was one where they levied extra assessments as needed. They ran from three assessments up to seventeen, whenever they were needed. In 1898 they made an attempt to make their assessments uniform at one a month, twelve a year, by an emergency fund provision. The amount of the emergency fund that was accumulated from these assessments between the amendment of 1898 and the amendment of 1905 was approximately two million. I don't think it was as much as two million and a quarter, but it was around two million; I just have that in my mind; it has been five years since I investigated. Therefore, upon those rates between 1898 and 1905, from these assessments they had accumulated two million dollars.

By the Court:

Q. Emergency fund?
A. Emergency fund; yes, sir.

By Mr. Mosman:

Q. Will you tell me under what process of reasoning a man aged sixty-four pays the same rate that he did when he entered the order, whether he was forty-two or forty-five made no difference—pays it until he is sixty-four—tell me why, when he attains the age of sixty-five, he should then pay sixteen dollars net rate, whereas the other members pay three, four or five dollars a month?

A. I assume you speak of the 1905 rate—under that rate he paid for term insurance from any age below sixty-five to age sixty-five. There the amount—that rate stopped, as term protection. Now, if he continues there a rate was made for the whole period of
111 life at sixty-five. It was a continued term and whole life rate.

Q. I understood you at the beginning to state that you based your opinions upon all these things on the experience you had with some life insurance companies. Did you say that?

A. With some sixty-eight fraternal societies; yes, sir.

Q. Any life insurance companies?

A. Yes, sir; I have had experience with life insurance companies.

Q. Do you know of a life insurance company that increases the rate of its policy holders at any period of life so long as the policy holder pays the original amount that he agreed to pay?

Mr. Powell: Objected to as immaterial, irrelevant and incompetent.

The Court: It all depends on what the contract is. Objection overruled.

Exception taken.

By the Court:

Q. What do you say?

A. It is according to the term. I know them others at the end of a term they increase it—at the end of expectancy. They will have a contract running on a term, to the end of the man's expectancy, and then it increases for life. They will have a term running for ten years, and at the end of that time they increase it. There are many contracts of that sort.

By Mr. Mosman:

Q. Will you tell me a company that has that?

A. The Mutual Life in New York, here in your city.

[illegible] Charles H. Waterman, Arlington, Mass., called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Powers:

Q. I am an attorney and counsellor at law, admitted to practice at the bar of the State of Massachusetts. I have been a practitioner in that state nine years. I have with me the Revised Laws of the State of Massachusetts.

Mr. Powers: I offer in evidence Chapter 118 of the Laws of the Commonwealth of Massachusetts.

By the Court:

Q. Refers to fraternal beneficiary corporations, the law that governs fraternal associations in Massachusetts, that this corporation is organized under the laws of Massachusetts, not being licensed in the State of New York under provision of the superintendent of insurance of the state. It is Chapter 118 of the Revised Laws of Massachusetts. There is only one edition. That is volume one, edition of 1902, page 1188.

Same designated as Exhibit 1, but not marked.

By Mr. Powers:

Q. Now, Mr. Waterman, have we some other law here which we wish to offer in evidence, and will you kindly, without my being sworn, turn to them?

A. Chapter 106, Section 5, providing that by charters and by-laws of corporations shall remain subject to all laws in alteration, modification by the Legislature of the State of Massachusetts.

Mr. Powers: I offer this in evidence.

[illegible] By the Court:

Q. Have you indicated it in some way?

A. Yes, Chapter 106 of the Revised Laws, Section 5. It is page 107, Volume One.

Same designated as Exhibit 2, but not marked.

Mr. Powers: I offer in evidence a certified copy of the record in the suit of Stephen W. Reynolds and others against the Supreme Council of the Royal Venators, certified by the Supreme Judicial Court, Commonwealth of Massachusetts.

The Court: What is the object of that? It is not objected to, but I would like to know for my own information.

Mr. Powers: The object is to show exactly what the records are of the State of Massachusetts is.

The Court: I do not think you can show it by the record in a particular case. Do you object to it?

Mr. Stevens: I do most decidedly, but I am waiting for this to get through.

Objection sustained.

Mr. POWELL: One other suggestion. It is to show the construction of the Massachusetts Statutes by the Courts of Massachusetts.

The COURT: You cannot show that by the record in a particular case. Every case depends on its own facts.

Mr. POWELL: Then I will except to the rejection of the record and ask to have it marked for identification.

Same marked Exhibit K for identification.

Q. Under the law as decided by the courts of Massachusetts has the Royal Arcanum, the Supreme Council of the Royal Ar-
114 canum, power and authority to change its rates of assessment?

A. Yes.

By the COURT:

I am referring now to a reported case, Reynolds against the Supreme Council of the Royal Arcanum. It is reported in 192 of Massachusetts reports, at page 150, I believe.

By Mr. POWELL:

The Supreme Judicial Court of the Commonwealth of Massachusetts is its court of highest authority. It is the court of last resort.

Cross-examination by Mr. MOISSEN:

I was connected with that case, the Reynolds case. That case was tried by the Court upon an agreed state of facts and a bill in chancery—virtually a bill in chancery, and upon that agreed state of facts that decision was made.

The COURT: Do you claim it was not a bona fide litigation?

Mr. MOISSEN: Why, certainly not. One of the decisions quoted there is relative absolutely to dues, and not to assessments.

Mr. POWELL: Will your Honor permit me to renew the offer of Exhibit K for identification, upon the ground that it is competent, having been brought as a stockholders' action, for the benefit of all stockholders or all parties in interest, leaving out the word "stockholders," although your Honor understands what I mean by it, and therefore, having been brought for all parties in interest it is binding upon all parties in interest, and for that purpose I renew the offer in evidence.

115 Objected to by Mr. Moissen.

Objection sustained. Exception taken.

Mr. POWELL: Will your Honor permit one other suggestion on my part, and that is this: Our contention here is that this is admissible, furthermore, upon this ground, that the contract between every one of these members, particularly as to his connection with the organization as one who contributes towards the Widows' and Orphans' Benefit Fund, in the management of the internal affairs of the corporation—that the contract consists of the application, the certificate, the laws of the order and the laws of the state from which the corporation takes its life, and that therefore the construction

which the Court where the corporation has its residence and life, of its own Statute, as a part of the contract, becomes competent evidence in the case, and so I renew this offer of Exhibit K again, upon that ground.

The COURT: The proposition of law which you advance is one with which we are all familiar, but I exclude the offer and give you an exception.

The defendants rest.

The COURT: I am not going to decide the case now, but for your information, I would say that I think this case resolves itself into this: What was the bargain between the parties; what was the contract between the parties?

If there was any right reserved to this association in the original certificate, to increase their assessments, or if there is any right given to them under the laws of the State of New York, they have the right. Now, if they have not the right under the contract between the parties or under the laws of the state, granted the very
116 serious effect of so adjudicating, how is even a court of equity to come to your assistance? I mean, granted that the Court be convinced, under the familiar rule of equity, that the injury be done to the vast body of associates in the Arcanum would be immeasurably more than the injury done to this man, still, if he has his contract rights, are not they controlling? This is what I want you to discuss.

Of course, you say here, and, as I recall it, you said when the case was before me at the Special Term for Motions, there is a grave question whether, under their certificate, they have not reserved the right to increase their rates.

At any rate, those are the points that I would be glad to have you discuss, and after you prepare your briefs and your requests to find I will give you a hearing any time you say and have you discuss it at length.

Briefs to be exchanged between the parties.

Oral argument to be had before the Court on July 6th, at ten A. M.

Exhibits.

EXHIBIT 1.

"Seal of De Witt Clinton Council, No. 419, R. A.

No. on Roll Book, 341. Age, 37. Rate, Full Assessment, $1.80.

Application for Membership in the Royal Arcanum.

BROOKLYN, *First of May*, 1883.

To the Officers and Members of De Witt Clinton Council, No. 419, Royal Arcanum, Located at Brooklyn, New York:

Having become acquainted with the objects of your Order,
117 I hereby make application for full rate membership in your Council, and do declare, upon my honor as a man, that the

statements by me subscribed herein are each and every one of them true, to the best of my knowledge and belief. I am not now a member of this Order; I have not, within six months, been rejected; am not now under suspension, and have never been expelled from any Council of this Order; and am a believer in a Supreme Being.

I reside at No. 381 Bergen Street, Brooklyn, State of New York. I was born on the 19th day of November 1845 and am between 37 and 38 years of age. My occupation is that of Lawyer. Place of business, No. 146 B'way N. Y. I direct that, in case of my decease, all benefit to which I may be entitled from the Royal Arcanum, be paid to Louisa Green related to me as my wife, subject to such future disposal of the benefit, among my dependents, as I may hereafter direct, in compliance with the Laws of the Order. I am temperate in my habits, and have no injury or disease which will tend to shorten my life; am now in good health and am able to gain a livelihood. I do hereby consent and agree that any untrue or fraudulent statement made above, or to the Medical Examiner, or any concealment of facts by me in this Application, or my suspension or expulsion from, or voluntarily severing my connection with the Order, shall forfeit the rights of myself and my family, or dependents, to all benefits and privileges therein. I agree to make punctual payment of all dues and assessments for which I may become liable, and to conform in all respects to the Laws, Rules, and Usages of the Order now in force, or which may hereafter be adopted by the same.

SAMUEL GREEN.
Applicant's Name in Full.

Recommended by

CHAS. F. BLOOM.
M. S. H. SMITH.

118 I hereby certify that Samuel Green was admitted to this council this 19 day of June 1883.

M. F. H. SMITH, *Secretary.*

Questions to be Asked by the Collector on the Night of Initiation:
Ques. When were you born?
Ans. On the 19th day of Nov. 1845.
Ques. How old are you at this time?
Ans. Between 37 and 38 years.

I hereby certify that Samuel Green has been entered on the W. & O. B. F. Account book as between the above ages. Amount of one Assessment, $1.80.

F. B. VAN WART, *Collector.*

EXHIBIT 2.

No. 47218. $3,000.

[SEAL.]

Royal Arcanum

Benefit Certificate.

This Certificate is issued to Samuel Green a member of De Witt Clinton Council No. 419, Royal Arcanum, located at Brooklyn, N. Y., upon evidence received from said Council that he is a contributor to the Widows' and Orphans' Benefit Fund of this Order; and upon condition that the statements made by him in his application for membership in said Council, and the statements certified by him to the Medical Examiner, both of which are filed in the Supreme Secretary's office, be made a part of this contract, and upon condition that the said member complies, in the future, with the laws,
119 rules and regulations now governing the said Council and Fund, or that may hereafter be enacted by the Supreme Council to govern said Council and Fund.

These conditions being complied with, the Supreme Council of the Royal Arcanum hereby promises and binds itself to pay out of its Widows' and Orphans' Benefit Fund, to Louisa Green (wife) a sum not exceeding Three Thousand Dollars, In accordance with and under the provisions of the laws governing said Fund, upon satisfactory evidence of the death of said member, and upon the surrender of this Certificate; provided that said member is in good standing in this Order at the time of his death; and provided also that this Certificate shall not have been surrendered by said member, and another Certificate issued at his request, in accordance with the laws of this Order.

In Witness Whereof the Supreme Council of the Royal Arcanum has hereunto affixed its seal, and caused this Certificate to be signed by its Supreme Regent, and attested and recorded by its Supreme Secretary, at Boston, Mass. this 21st day of June, A. D. 1883.

JOHN HASKELL BUTLER,
Supreme Regent.

Attest:

W. O. ROBSON,
Supreme Secretary.

Witnessed and delivered in our presence.

EDWIN KEMPTON, *Regent.*
M. F. H. SMITH,
Secretary of De Witt Clinton Council, No. 419, R. A.

I accept this Certificate on the conditions named therein.

SAMUEL GREEN.
(Signature of member.)

120 EXHIBIT 3.

Statement of W. & O. B. Fund, Oct. 31, 1909.

Balance on hand	$797,102.89
Received since on back Assessments	972.71
Received since on Assessment No. 397	677,920.58
Received since Interest	1,902.74
Received since on new rate after 65	727.90
Order No. 47133*a* returned and cancelled	2,250.00
Total	$1,480,876.72
Total Receipts	$1,480,876.72
Paid Orders amounting to	661,531.04
Cash Balance	$819,345.68
Emergency Fund	$5,604,861.66
Resources	$7,101,307.34
Total known liabilities	666,409.22

January Assessment No. 401.

341. ROYAL ARCANUM,
DE WITT CLINTON COUNCIL, No. 419,
BROOKLYN, N. Y., *January* 1, 1910.

To Samuel Green.

DEAR SIR AND BROTHER: This is to remind you that your assessment for the current month amounts to $6.86.

Assessments are due and payable on or before the last day of each current month before 10 o'clock P. M. without notice. Failing to pay the same you will stand suspended from the Order and all benefits therefrom.

GEO. F. CHURCHILL, *Collector.*

121 All mail to residence 231 Lexington Avenue, Brooklyn. At 117 Nassau St., New York daily from 9 to 10:30 A. M. only.

This reminder is purely an act of courtesy on the part of the Council and is not required by law. Failure to receive it does not absolve a member from penalty for non-payment.

A member may advance all the regular assessments in one-quarter or in one-half year.

Received above Ass't Jan. 29, 1910.

GEO. F. CHURCHILL, *Collector.*

Payable Now.

Dues in advance to March 30..... 1.50

Paid.

[SEAL.] GEO. F. CHURCHILL, *Col.*

Paid under Protest.

S. G.

EXHIBIT 4.

De Witt Clinton Council, No. 419.

FEB'Y 2D, 1910.

Mr. Sam'l Green.

DEAR SIR & BRO.: I return your cheque for $3.17 received this A. M. same not being in full for Ass't # 402 due Feb'y 1st as stated; the amount being $6.87 in accordance with the table of rates adopted by the Supreme Council in 1905 and since paid by you.

Yours in V. M. C.,

GEO. F. CHURCHILL, *Coll.*

122 EXHIBIT 5.

No. 659.

BROOKLYN, N. Y., *Feb'y* 1, 1910.

Payable at Brooklyn Branch of
Lawyers' Title Insurance and Trust Company.

186 Montague Street.

Pay to the order of Geo. F. Churchill Collector Three 17/100 Dollars.

SAMUEL GREEN.

$3.17/100.

EXHIBIT 6.

190 MCDONOUGH ST.,
BROOKLYN, *Feb.* 1, 1910.

Geo. F. Churchill, Collector De Witt Clinton Council, No. 419, R. A.

DEAR SIR AND BROTHER: I enclose herewith my check for $3.17 in full payment of assessment No. 402 to W. & O. B. Fund of the Royal Arcanum payable this day.

This amount is the same as paid for each assessment prior to October 1905 and I am advised is that which is legally payable on each assessment in order to maintain my standing in the order.

I enclose stamp for return of receipted assessment.

Yours in V. M. C.,

SAMUEL GREEN.

123 **EXHIBIT 7.**

The Code of Constitution and Laws of the Royal Arcanum, &c., Which Took Effect on May 26, 1904.

(The following is so much of Exhibit 7 as is material herein.)

Chapter II.

* * * * * * *

Part III.

Constitution of Subordinate Councils.

124 Article I.

Composition, Powers, Revenue, Meetings, Seal Stamp.

Chapter I.

Composition, Powers and Revenue.

SEC. 176*a*. (6) The moneys collected from members for the W. & O. B. Fund, Supreme Council dues, and changes of Benefit Certificates shall be kept separate from the General Fund and shall not form any part of the funds of the Council and shall be disposed of as provided in the laws of the Order.

Part IV.

General Laws of the Royal Arcanum.

Title I.

Application for Election and Initiation to Membership.

Chapter IV.

Conferring the Degree and Suspension Thereof During Epidemics.

Fees to Be Paid.

SEC. 280. (1) Each applicant on presenting himself to receive the degree shall sign the obligation of the Order, pay to the Widows' and Orphans' Benefit Fund the assessment for the current month to be fixed by the age he has attained at said date and dues for the current quarter or fraction of a quarter (not less than fifty cents).

125 Title VI.

Widows' and Orphans' Benefit Fund.

Chapter I.

Rate of Assessment of Members and Payments to the Fund—What Members Pay.

SEC. 430. (3) Every applicant upon presenting himself to receive the Degree and every member who has received the Degree excepting members holding certificates for fifteen hundred dollars shall pay to the Collector the following named amounts for the Widows' and Orphans' Benefit Fund according to the age attained at the time of receiving the Degree and according to the amount of the Benefit Certificate applied for or held by him and the same amount on each assessment thereafter, whilst he is a member of the Order unless he shall have changed his rate, viz:

(Here follows the table printed under paragraph LIII of the decision at pages 41 and 42 of the transcript of the record, and on page 21 of the printed record.)

* * * * * * *

126 Chapter III.

Payments to the Fund and Suspension for Non-payment.

Payments by Members.

SEC. 433. (1.) Each member of the Order shall pay to the Collector of his Council without notice twelve regular assessments in each calendar year, one of which shall be due and payable before ten o'clock P. M. of the last day of each calendar month, and in addition to said regular assessments such extra assessments as may from time to time be required and levied as provided in this Title.

Suspension for Non-payment.

SEC. 436. Any member failing to pay any regular assessment before the time prescribed for such payment in the laws of the Order, or to pay any extra assessment within the time limited or prescribed therefor in the notice thereof shall stand suspended from the Order and all benefits therefrom.

Chapter IV.

Laying and Collecting of Extra Assessments.

How Laid.

SEC. 454. Whenever in the opinion of the Supreme Regent, Supreme Secretary and Supreme Treasurer the condition of the

Supreme Treasury shall make it necessary or expedient to levy an extra assessment for the Widows' and Orphans' Benefit Fund they shall make declaration of such opinion in triplicate each copy of which shall have the full force of an original which shall be filed with the Supreme Secretary.

127 (2.) The making of such declaration and the filing thereof with the Supreme Secretary shall constitute and be the lay levy of such extra assessment.

(3.) The Supreme Secretary shall at once notify every Council to collect immediately the amount of one assessment from every member upon whom the Degree was conferred before the date in such notice.

Chapter V.

Emergency Fund—How Created and Used.

Emergency Fund.

SEC. 459. (1.) Whenever the Widows' and Orphans' Benefit Fund on deposit by the Supreme Treasurer shall exceed the amount of the mortuary liabilities then reported to the Supreme Secretary officially and unofficially; and the Supreme Regent, Supreme Secretary and Supreme Treasurer shall deem it advisable so to do the Supreme Treasurer shall pay such excess to the Supreme Trustees for a fund to be known as the Emergency Fund and notify the Supreme Secretary of the time of such payment.

Use of Fund.

The said fund may be used to pay current mortuary liabilities whenever the Supreme Council by a two-thirds vote or its Executive Committee by a vote of at least seven members shall so direct.

128 EXHIBIT B.

Commonwealth of Massachusetts.

OFFICE OF THE SECRETARY,
BOSTON, *February* 24, 1904.

I Hereby Certify, that the foregoing is a true copy of the record of the Certificate of Incorporation of the Supreme Council of the Royal Arcanum organized under the provisions of chapter three hundred and seventy-five, section four of the Acts of the year eighteen hundred and seventy-four.

Witness the Great Seal of the Commonwealth.

[SEAL.] WM. M. OLIN,
Secretary of the Commonwealth.

No. 731.

Copy.

Commonwealth of Massachusetts.

Be it known That whereas Darius Wilson, Charles K. Darling, W. O. Robson, Ezra M. Crawford, J. A. Cummings, George W. Blish, William Bradley, J. H. Wright and Julius M. Swain have associated themselves with the intention of forming a corporation under the name of the Supreme Council of the Royal Arcanum, for the purpose of fraternal union, aid to its members, & their dependents, the education, socially, morally and intellectually, of its members, assisting the widows and orphans of deceased members, establishing a fund, for the relief of sick and distressed members, and one for a widows' and orphans' benefit fund, &c., &c., and
129 have complied with the provisions of the Statutes of this Commonwealth in such case made and provided, as appears from the certificate of the Proper Officers and Executive Committee of said corporation, duly approved by the commissioner of Corporations, and recorded in this office:

Now Therefore, I, Henry B. Peirce, Secretary of the Commonwealth of Massachusetts, do hereby certify that said D. Wilson, C. K. Darling, W. O. Robson, E. M. Crawford, J. A. Cummings, G. W. Blish, W. Bradley, J. H. Wright and J. M. Swain, their associates and successors, are legally organized and established as and are hereby made an existing corporation under the name of the Supreme Council of the Royal Arcanum, with the powers, rights, and privileges, and subject to the limitations, duties, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the Commonwealth of Massachusetts hereunto affixed this fifth day of November in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] (Signed) HENRY B. PEIRCE,
Secretary of the Commonwealth.

130 EXHIBIT A.

(The following is so much of Exhibit "A" as is material.)

"Supreme Council Constitution.

Article I.

Name and Powers.

SECTION 1. This body shall be known as the Supreme Council of the Royal Arcanum, with power to make its own Constitution, Rules of Discipline and Laws for the Government of the whole Order.

SEC. 2. It shall be the body to which all appeals shall be made on all matters of importance, emanating from Grand and Subordinate Councils.

Article II.

Objects of the Order.

The objects of the Order shall be—1st. To unite fraternally all white men of sound bodily health, and good moral character, who are socially acceptable, and between twenty-one and sixty years of age.

2d. To give all moral and material aid in its power to its members and those dependent upon them.

3d. To educate its members socially, morally and intellectually; also to assist the widows and orphans of deceased members.

4th. To establish a fund for the relief of sick and distressed members.

5th. To establish a Widows' and Orphans' Benefit Fund, from which, on the satisfactory evidence of the death of a mem-
131 ber of the Order, who has complied with all its lawful requirements, a sum not exceeding three thousand dollars shall be paid to his family or those dependent on him, as he may direct.

Article IV.

Membership and Representatives.

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132 & 133 **Article V.**

Officers and Elections.

SECTION 1. The elective officers of this Supreme Council shall be a Supreme Regent, Supreme Vice Regent, Supreme Orator, Supreme Secretary, Supreme Treasurer, Supreme Chaplain, Supreme Guide, Supreme Warden, Supreme Sentry, a Finance Committee of three, a Committee on Laws of three, a Committee on Appeals of three, and three Trustees, who shall be elected annually; provided that no person shall be eligible to the office of Supreme Regent, Supreme Secretary or Supreme Treasurer, who has not been a member of this Supreme Council for the year preceding his election.

SECTION 2. The nomination and election of officers shall take place at such time during each annual meeting as the Supreme Council may by resolution provide, and the installation shall take place upon the last day of each annual meeting.

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134 **Article IX.**

Duties of the Officers.

SECTION 1. (1) The Supreme Regent shall preside at all meetings of this Supreme Council, and enforce all laws thereof. He shall

have the general superintendence of this Order, with power to grant dispensations, when the good of the Order may require it, except for the admission of unqualified persons to membership, or to authorize a violation of a law of this Order, or to legalize a wilful violation of such law.

(2) When charges are preferred against a Grand Council, or a Subordinate Council not under the jurisdiction of a Grand Council, for violation of the Constitution, Laws and Regulation of this Order, he shall furnish them a copy of the same, and he shall appoint a committee of three members of this Supreme Council to assemble at such time and place as he may determine; he shall notify the Council against whom charges have been preferred, of the time and place of meeting of the said committee; and he shall notify the party bringing the charges thereof, and it shall be the duty of said committee or a majority thereof, to meet at the time and place named, and then and there to hear, and reduce to writing, all testimony offered by the accuser and the accused; then said testimony shall be signed by the witnesses so testifying and the committee, or a majority thereof, shall submit to the Supreme Regent a written report and opinion; and the Supreme Regent shall have full power and authority to carry out and enforce the penalties recommended in said report and opinion, provided it meets his approval, and he shall report the same and his action thereon at the next annual meeting of this Supreme Council, for its approval or re-
135 jection; then if the proceedings of the committee and action of the Supreme Regent be approved by the Supreme Council, the same shall be final, otherwise void.

(3) He shall institute annual and semi-annual pass-words, and, with the assistance of the Supreme Secretary and Deputy Supreme Regents, he shall furnish the same to each Grand and Subordinate Council in good standing.

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SECTION 3. The Supreme Orator shall be prepared to deliver lectures upon the work of the Order whenever and wherever the Supreme Regent shall direct. He shall also visit all Councils (if practicable) not under the jurisdiction of Grand Councils, whenever directed to do so by the Supreme Regent, and instruct them in the secret work and manner of delivering the lectures. For his services he shall receive such sum as the Supreme Council shall determine, and as the Subordinate Councils or members may from time to time pay him for visits or lectures.

SECTION 4. (1) The Supreme Secretary shall keep a correct report of the proceedings of this Council. He shall read all
136 communications, reports, petitions, etc. and attest all orders drawn on the Supreme Treasurer. He shall affix the seal of the Supreme Council to all official documents. He shall prepare for publication a copy of the proceedings of this Council within one month after the close of each annual or called meeting. He shall also make to this Supreme Council on the first day of each annual meeting, a complete statement of the condition of this order.

(2) He shall comply and arrange for publication, subject to the

approval of the Committee on Laws, all amendments to the Constitution and Laws adopted by the Supreme Council.

(2) In the months of June and December of each year he shall furnish the semi-annual password, as prepared by the Supreme Regent, to the Grand Regent of each Grand Council and to all Deputy Supreme Regents.

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197 SECTION 5. (1) The Supreme Treasurer shall perform all duties relating to the Widows' and Orphans' Benefit Fund, as prescribed in the General Laws of the Order.

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SECTION 6. The Supreme Chaplain shall offer invocations to, and at Meetings of the Unity, and perform such other duties as are required by law, rules and usages of this order.

SECTION 7. The Supreme Guide, Supreme Warder, Supreme Sentry and Past Supreme Regent, shall perform all the duties required of them at their several stations in the council.

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SECTION 9. Deputy Supreme Regents shall represent the Supreme Regent in the territory not under the jurisdiction of a Grand Council. It shall be the duty of a Deputy Supreme Regent to see the work of this order is uniform in his territory. He shall install or cause to be installed all officers of Subordinate Councils under his charge. He shall communicate the semi-annual password to the Regent of a Council under his charge only upon the production of a receipt from the Supreme Secretary for the semi-annual report and per capita tax due the Supreme Council. He shall officially visit all Councils placed under his charge, within thirty days
199 of the receipt of his Commission, see that they are properly instructed, examine their records, all of membership and account books, and make a written report of all such visits to the Supreme Secretary, within ten days thereafter. He shall perform such other duties as the Supreme Regent may, from time to time, direct. He shall make a full report of his official acts to the Supreme Regent in time to present it to the Supreme Council at its annual meeting.

Article X.

SECTION 3. The Committee on Laws shall examine and approve the Constitution and Laws of all Grand Councils not under the supervision of a Grand Council, and all subsequent amendments or alterations made thereto, provided the same do not repeal or conflict with the Constitutions, laws and by-laws, shall not take effect until so approved. They shall examine and report upon all proposed amendments to the Constitution and Laws of the Supreme Council. They shall present a written report to the Supreme Council at each annual meeting.

SECTION 6. The Committee on Secret Work shall examine all

documents referring to the seven seals of the other and shall perform such other duties as may be assigned to him.

SECTION 7. The Committee on Technical Staff assisting the undersigned of all representatives of the Supreme Council. They shall examine the due execution of the powers seals of the other.

PART III

Court Councils

SECTION 1. Court Councils may be instituted in State, (a) Territories, or in any Province of the Dominion of Canada, where one or more Subordinate Councils are in good standing, with a total membership of not less than one thousand upon proper application being made to the Supreme Council, or to the Supreme Deputy, a power of the Supreme Council. Such application must be signed by not less than five Deputies in good standing, who represent two or more different Subordinate Councils.

SEC. 2. The power of Court Councils shall be the same and the same for their own government, to establish Subordinate Councils, to exercise jurisdiction over Subordinate Councils within their respective jurisdictions, in conformity with the Constitution of the Supreme Council and the Constitution for Subordinate Councils provided by the Supreme Council, and the laws and usages of the Supreme Council, and to have general supervision of the Order in their respective jurisdictions; provided, however, they shall have no control of the Widows and Orphans' Benefit Fund.

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PART IV

Amendments

SECTION 1. The Constitution of the Supreme Council and the Laws governing the W. B. of A. E. Fund, shall not be altered or amended except by a two-thirds vote of the entire membership of the Supreme Council at a regular meeting, or at a special meeting called for the purpose, and of proposed amendments (a) shall be presented in writing signed by three or more members and referred to the Committee on Laws. It shall appear to be more than one half by majority upon the adoption of any amendment, a copy of the same shall be sent

SEC. 2. The Constitution of Subordinate Councils and the Laws of the Supreme Council except those relating to the Widows and Orphans' Benefit Fund, may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting called for the purpose, by a two-thirds vote of the members present, provided that such amendment shall be presented in writing signed by three or more members, and referred to the Committee on Laws for their report before being acted upon.

Laws of the Royal Arcanum.

Law I.

Widows' and Orphans' Benefit Fund.

SECTION 1. Every member, upon presenting himself to receive the Degree, shall pay to the Collector the following rates or half-rates for the Widows' and Orphans' Benefit Fund, and the same amount on each assessment thereafter, whilst he is a member of this Order, viz.:

Between	the	ages	of	21	and 22	$1.00
"	"	"		22	" 23	1.04
"	"	"		23	" 24	1.08
"	"	"		24	" 25	1.12
"	"	"		25	" 26	1.16
"	"	"		26	" 27	1.20
"	"	"		27	" 28	1.24
"	"	"		28	" 29	1.28

"	"	"		29	" 30	1.32
"	"	"		30	" 31	1.38
"	"	"		31	" 32	1.44
"	"	"		32	" 33	1.50
"	"	"		33	" 34	1.56
"	"	"		34	" 35	1.62
"	"	"		35	" 36	1.68
"	"	"		36	" 37	1.74
"	"	"		37	" 38	1.80
"	"	"		38	" 39	1.86
"	"	"		39	" 40	1.93
"	"	"		40	" 41	2.06
"	"	"		41	" 42	2.16
"	"	"		42	" 43	2.26
"	"	"		43	" 44	2.36
"	"	"		44	" 45	2.46
"	"	"		45	" 46	2.58
"	"	"		46	" 47	2.70
"	"	"		47	" 48	2.82
"	"	"		48	" 49	2.96
"	"	"		49	" 50	3.10
"	"	"		50	" 51	3.26
"	"	"		51	" 52	3.42
"	"	"		52	" 53	3.60
"	"	"		53	" 54	3.80
"	"	"		54	" 55	4.00

All such payments shall be known as the Widows' and Orphans' Benefit Fund. The date of such payment shall be kept by the Col-

lector, and the brother credited with the same. No member shall be assessed for a death that occurs prior to the day of his receiving the Degree.

Sec. 2. Three thousand dollars shall be the highest amount paid by this Order on the death of a brother. This sum shall be paid on the death of every full rate member, and one thousand and
143 five hundred dollars on the death of every half rate member; provided, however, that should a death occur when one full assessment on each member would amount to three thousand dollars, then the sum paid shall be the amount of one full or one-half of a full assessment on each member in good standing in the Order at the date of death, and such amount shall be all that can be claimed by any one.

Sec. 3. On the death of a Brother in good standing the Council shall appoint a Committee to ascertain the cause of death and the circumstances attending the same. The report of said Committee and proof of the death, shall be forwarded to the Supreme Secretary by the Regent and Secretary, under seal of the Council, together with an official notice of such death, in accordance with a form furnished by the Supreme Secretary. Such notice must state the name, age at the date he was initiated, the number of his Benefit Certificate, the date and cause of his death, and the amount he has paid into the Widows' and Orphans' Benefit Fund, that he was in good standing, and whether a full or half-rate member. Further proof of such death may be required if deemed necessary by the Supreme Regent.

Sec. 4. On the receipt of such official notice of the death of a member, the Supreme Secretary shall draw an order on the Supreme Treasurer in favor of the person or persons named in the Benefit Certificate, for the amount due on said death, and forward it, with all the papers relating to the case, to the Supreme Regent. On the receipt of the order, duly signed by the Supreme Regent, the Supreme Secretary shall transmit it to the Treasurer of the Subordinate Council of which the deceased was a member, and notify the Secretary thereof of such transmission.

144 & 145 Sec. 5. It shall be the duty of the Treasurer of the Subordinate Council, on the receipt of the order from the Supreme Secretary, to immediately deliver it to the person or persons in whose favor it is drawn and to receive in return the Benefit Certificate properly indorsed, which Certificate he shall immediately forward to the Supreme Treasurer, who shall in turn immediately forward the same to the Supreme Secretary, who shall place it upon file in his office. Said delivery shall be certified to by the Regent and Secretary and attested with the seal of the Council, and spread upon the records of the Subordinate Council. In case of the death of the person or persons named in the order before delivery is made, the order shall be returned to the Supreme Secretary with a statement of the facts, signed by the Regent, Treasurer and Secretary, under seal, and a new order shall be drawn, payable to the person or persons entitled to the benefit.

Sec. 6. Whenever the condition of the Supreme Treasury shall make it necessary to lay an assessment to pay a death benefit, the

Supreme Secretary shall, at once, notify every Council to forward immediately to the Supreme Treasurer the assessment due from every member upon whom the degree was conferred on or before the date of said death, in accordance with a form prescribed by the Supreme Council, which shall include a list of all deaths that have occurred subsequent to the last assessment.

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146 Sec. 8. (1) The Subordinate Council having been notified by the Supreme Secretary that an assessment has been laid, it shall be the duty of the Collector to at once notify every member liable to an assessment.

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(3) Each member shall pay the amount due on the notice of the Collector within forty days from the date of such notice, and any member failing to pay such assessment within forty days, shall stand suspended from the Order and all benefits therefrom. The Collector shall immediately notify the Regent of the date of such suspension, and the Regent shall announce the suspension and date thereof at the next meeting of the Council; provided that a Council may authorize the payment of a member's assessment as a loan or gift from its general fund; but such payment must be made to the Collector within the forty days prescribed in the call.

Law III.

Benefit Certificates.

Section 1. Every Council shall forward to the Supreme Secretary all applications for membership, within thirty days from the
147 applicant's initiation, and with each application one dollar to pay for a Benefit Certificate.

Sec. 2. Each member shall enter upon his application the name or names of the members of his family or those dependent upon him to whom he desires his benefit paid, subject to such future disposal of the benefit among his dependents as the member may thereafter direct, and the same shall be entered in the Benefit Certificate according to said direction; provided that no benefit shall be made payable to any person or persons permanently residing outside the limits of the United States or Dominion of Canada.

Sec. 3. A member may, at any time, when in good standing, surrender his Benefit Certificate and a new Certificate shall thereafter be issued, payable to such beneficiary or beneficiaries dependent upon him as such member may direct, upon the payment of a Certificate fee of fifty cents. Said surrender and direction must be made in writing, signed by the member, and forwarded under seal of the Subordinate Council with the Benefit Certificate to the Supreme Secretary. Upon furnishing satisfactory evidence of the loss of the Benefit Certificate, and the payment of a fee of fifty cents, a duplicate thereof shall be issued to such member.

Law VII.

Supplies.

SEC. 4. All books, blanks, badges, jewels, regalia, uniforms and emblems used by Grand and Subordinate Councils shall be of the same quality, size, pattern and material, and in all respects like those prescribed and furnished by the Supreme Council.

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Law IX.

Appeals.

SECTION 1. Any member considering that a decision is unjust or not in accordance with the Constitution and Laws of this Order, shall have the right of appeal in the manner described as follows: From the Regent to the Council, at the same meeting; from the Council at the same or the next regular meeting to the Grand Regent; from the Grand Regent to the Grand Council, if in session, and if not, to the Supreme Regent within thirty days; from the Grand Council in session to the Supreme Regent within thirty days; from the Supreme Regent to the Supreme Council; provided, that in all matters relating to the Widows and Orphans' Benefit Fund the appeal shall be taken direct from the Subordinate Council to the Supreme Regent.

SEC. 2. A member of a Grand Council shall have the right of appeal from the Grand Regent or Grand Council, to be prosecuted in the manner and within the time prescribed in the preceding section, for an appeal of a member of a Subordinate Council from the decision of the Grand Regent or Grand Council.

Law XIII.

Degree and Dispensation Fees.

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Law XIV.

Jewels of the Order.

For all Past Supreme Regents—A five pointed Star laid on a circle.
For Supreme Regent—Two Truncheons laid parallel on a circle.
For Supreme Vice-Regent—One Truncheon laid on a circle.
For Supreme Chaplain—Open Book laid on a circle.
For Supreme Orator—Open scroll laid on a circle.
For Supreme Treasurer—Crossed Keys laid on a circle.
For Supreme Secretary—Crossed Pens laid on a circle.
For Supreme Guide—Crossed Staffs laid on a circle.
For Supreme Warden—Crossed Swords laid on a circle.
For Supreme Sentry—Single Sword laid on a circle.
For Deputy Supreme Regent—Same as for Supreme Regent, with letter "D" on the ribbon.

Each circle shall be three inches in diameter, outside the rim; the rim to be one-half inch wide; the jewels to be of sufficient size to lay on the circle. Each circle shall be suspended from a crown-shaped escutcheon by a strip of purple colored ribbon or velvet.

For all Past Grand Regents—A five pointed star laid on a half-circle.

For all other officers of a Grand Council, jewels shall be the same as prescribed for Supreme Officers, but laid on a half-circle, and suspended by a scarlet ribbon from a crown-shaped escutcheon.

150 For all Past Regents—A five pointed Star suspended from a crown-shaped escutcheon by a blue ribbon.

For all other Subordinate Council Officers, the jewels shall be the same as prescribed for Supreme Council Officers, but shall hang from a crown-shaped escutcheon by a blue ribbon without circle or any other base; except that the truncheons shall be laid on a section of a circle. The Collector of a Subordinate Council shall wear, as a jewel, a closed book with a pen laid across it, suspended in same manner as other Subordinate Council Officers.

All jewels, or other metal devices of whatever rank, to be of gold, or metal gold-plated.

Law XV.

Uniform and Regalia.

SECTION 1. The uniform of the Order shall be worn with black or dark clothes, and shall be as follows:

(1) For members of the Supreme Council and all Past Grand Regents, black silk plush chapeau, trimmed with two black and one purple plumes, black rosette with purple center, and gold or gilt ornament on the left side; sword, gold-plated cross hilt, crown-shaped head and metal scabbard, with appropriate devices and lettering, to be suspended from belt with gold-plated chain. Belt, one and three-quarters inches wide, with clasp of appropriate design, gilt chains to suspend sword, cross belt three-quarters of an inch wide, to connect with belt by swivel or other suitable fastening. Belt and cross belt to be made of purple leather, or of purple velvet trimmed on each edge with gold-plated lace and lined with leather. Buff military gauntlet.

151 (2) For members of the Grand Council and all Past Regents, the uniform shall be the same as for Supreme Council, except where purple is used the material shall be scarlet.

(3) For all other members of the Order, the uniform shall be the same as for Supreme Council, except where purple is used the material shall be blue.

SEC. 2. The Regalia to be worn by members in the Council shall be a badge, consisting of a metal plate two inches in diameter, bearing on its centre the letters V. M. C. in monogram; this plate, in shape of a ten-pointed star, with a Malta cross at each of the ten points, shall be suspended by a blue ribbon, one inch wide and one and one-quarter inches long, from a crown-shaped metal plate, hav-

ing a five pointed star in the centre. This badge to be worn upon the left breast. The use of the badge herein adopted shall not be compulsory upon Councils now provided with crowns, until July 1st, 1885.

SEC. 3. Each officer and past officer in the Supreme, Grand and Subordinate Councils, shall wear as regalia, the appropriate jewel of his office or rank, and in addition thereto, during the conferring of the degree, a crown upon the head, with a five pointed star in front.

SEC. 4. All metal, lace or embroidery shall be gold or gold color.

SEC. 5. No member shall be allowed to enter or remain in the Council unless he is clothed in regalia, provided that this shall not apply to new Councils which have not been organized sixty days.

152–155 *Constitution Governing All Subordinate Councils of the Royal Arcanum.*

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156 Article VI.

Application for Membership.

SECTION 1. No person shall be admitted to membership in this Council except they are between the ages of twenty-one and fifty-five years. Each applicant must be a man of sound health, of good moral character, a believer in a Supreme Being, and competent to earn a livelihood for himself and family.

SEC. 2. Each applicant for membership must sign the application prescribed by the Supreme Council; state his age, occupation and residence; and he must be recommended by two members of this Council in good standing; the application must be accompanied by a sum not less than five dollars for the degree, not less than
157 two dollars for the Subordinate Medical Examiner, and fifty cents for the Supervising Medical Examiner. The application shall be read in open Council at a regular meeting thereof, and entered on the record, and the money placed in the hands of the Secretary. A committee of three members of this Council shall then be appointed to investigate the character of the candidate, and their report shall be filed with the Secretary as soon as possible. If the report of the committee is favorable, the Secretary shall notify the applicant to present himself to the Medical Examiner, who, after making an examination on the form prescribed by the Supreme Council, shall refer the same to the proper Supervising Medical Examiner. The report of the Committee and the medical certificates shall be presented together at the next stated meeting, if possible, and if all are favorable, a ballot may be had. If six members vote and the ballot is clear, or not more than one black ball appears, the applicant shall be declared elected. If two or more black balls are cast, the application shall be declared rejected, and shall not again be proposed or balloted for within six months thereafter; provided

that should the candidate be rejected by either the Subordinate or Supervising Medical Examiner, he shall be declared ineligible by the Regent, and if the report of the committee is unfavorable, the Regent shall declare the candidate rejected. Such ineligible or rejected candidate shall not be proposed or admitted to any Council within six months thereafter.

SEC. 6. Each applicant on presenting himself to receive the degree shall pay one dollar to the general fund for his Benefit Certificate and one advance assessment to the W. and O. B. Fund to be fixed by the age he has attained at said date and dues for the current quarter.

158–161 Article VII.

Dues and Benefits.

SECTION 1. Each member of the Order shall pay to his Council as dues to commence with the date of initiation at least fifty cents per quarter (or fractional parts of a quarter), and such additional sum as shall be prescribed in the by-laws, &c.

SEC. 4. Any member in good standing, and not in arrears for dues or fines, having six months previously obtained the Degree, who may become disabled by sickness or other disability from following his usual business or some other occupation, shall receive from the funds of his Council one dollar per week, while said sickness or disability continues, and such additional benefits as the Council may by By-law prescribe; provided said sickness or disability has not originated from intemperance or vicious or immoral conduct; and the Council may by By-law enact that no benefits be paid for the first week's sickness or disability. And member who may be taken sick or become disabled while in arrears to this Council for dues or fines, cannot by paying the same, become beneficial nor receive benefits during said sickness or disability; nor can a member who is beneficial and receiving benefits become in arrears for dues or assessments so as to debar him from the benefits of the Order, the Regent being authorized to pay the Collector from the amount drawn for his weekly benefits, or if that sum is not sufficient, from the General Fund, a sum sufficient to prevent him becoming in arrears for dues or assessments; nor shall a member be entitled to sick benefits while under charges, under the penal provisions of the laws, but if after due trial he shall have been acquitted or exonerated, he shall be entitled to receive weekly benefits if oth-rwise entitled thereto.

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162 EXHIBIT C.

(The following is so much of Exhibit "C" as is material.)

Article V.

Amendments to the Constitutions and Laws.

Chapter I.

SEC. 114. The Constitution of the Supreme Council and the Laws governing Grand Councils, the Widows' and Orphans' Benefit Fund, Benefit Certificates and Medical Examinations may be altered or amended by a three-fourths vote of the entire membership of the Supreme Council at an annual meeting, or at a special meeting called for the purpose.

SEC. 115. The Constitution of Subordinate Councils and the General Laws of the Order may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting, called for the purpose, by a two-thirds vote of the members present.

163 Title VI.

Widows' and Orphans' Benefit Fund.

Chapter I.

Rate of Assessment of Members and Payments to the Fund.

What Members Pay.

SEC. 430. Every applicant, upon presenting himself to receive the Degree, and every member who has received the Degree, shall pay to the Collector the following named amounts for the Widows' and Orphans' Benefit Fund, according to the age attained at the time of receiving the Degree, for full-rate membership; and half of said amounts for half-rate membership; and the same amount on each assessment thereafter, whilst he is a member of the Order, unless he shall have changed his rate, viz:

Between the ages of	Amt.
21 and 22	$1.76
22 " 23	1.82
23 " 24	1.90
24 " 25	1.96
25 " 26	2.04
26 " 27	2.10
27 " 28	2.18
28 " 29	2.24
29 " 30	2.32

	30	"	31	2.42
	31	"	32	2.52
	32	"	33	2.62
	33	"	34	2.74
	34	"	35	2.84
	35	"	36	2.94
164	36	"	37	3.04
	37	"	38	3.16
	38	"	39	3.26
	39	"	40	3.44
	40	"	41	3.60
	41	"	42	3.78
	42	"	43	3.96
	43	"	44	4.14
	44	"	45	4.30
	45	"	46	4.52
	46	"	47	4.72
	47	"	48	4.94
	48	"	49	5.18
	49	"	50	5.42
	50	"	51	5.70
	51	"	52	5.98
	52	"	53	6.30
	53	"	54	6.66
	54	"	55	7.00

Chapter III.

Payments to the Fund and Suspension for Non-payment.

SEC. 433. Each member of the Order shall pay to the Collector of his Council, without notice, twelve regular assessments in each calendar year, due and payable before ten o'clock P. M. of the last day of each calendar month, and in addition to said regular assessments such extra assessments as may from time to time be required and paid as provided in this Title.

SEC. 436. Any member failing to pay any regular or extra assessment before the time prescribed for such payment shall stand suspended from the Order and all benefits therefrom.

165

Chapter IV.

Laying and Collecting of Extra Assessments.

SEC. 454. Whenever, in the opinion of the Supreme Regent, Supreme Secretary and Supreme Treasurer, the condition of the Supreme Treasury shall make it necessary to levy an extra assessment for the Widows and Orphans' Benefit Fund, to meet any requirement thereof exceeding said twelve regular assessments, they shall make written declaration of such opinion in triplicate, each copy of which shall have the full force of an original, which shall be

filed with the Supreme Secretary, who shall make record of such filing. The Supreme Secretary shall at once notify every Council to collect immediately the amount of one assessment from every member upon whom the Degree was conferred before the date fixed in such notice.

SEC. 457. The Collector shall immediately notify each member to pay the extra assessment, according to the terms of the notice from the Supreme Secretary.

Chapter V.

Emergency Fund, How Created and Used.

SEC. 459. (1) Whenever the Widows and Orphans' Benefit Fund on deposit by the Supreme Treasurer shall exceed the amount of one assessment upon the entire membership then in the Order and the mortuary liabilities then reported to the Supreme Secretary, the Supreme Treasurer shall pay such excess to the Supreme Trustees for a fund to be known as the Emergency Fund, and notify the Supreme Secretary of the time and amount of such payment.

166–222 (2) The Income of such fund shall be used to pay current mortuary liabilities in case the twelve regular assessments are insufficient therefor, and the principal of such fund may be so used, upon the written direction of the Supreme Regent, Supreme Secretary and Supreme Treasurer, in any such contingency if said income does not meet such deficiency. If said income is not needed for the purpose aforesaid, the same shall be added to said fund.

(3) Said income and fund shall not be used for any other purpose than the payment of mortuary liabilities, &c.

Chapter VII.

Proof of Death and Payment of Death Benefit.

SEC. 473. No action at law or in equity in any court shall be brought or maintained on any cause or claim arising out of any membership or Benefit Certificate, unless such action is brought within three years from the time when such right of action accrues.

EXHIBIT D.

* * * * * * *

223 EXHIBIT G.

(The following is so much of Exhibit "G" as is material.)

Article V.

Amendments to the Constitutions and Laws.

Chapter I.

SEC. 114. The Constitution of the Supreme Council and the Laws governing Grand Councils, the Widows and Orphans' Benefit Fund, Benefit Certificates and Medical Examinations may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting called for the purpose, by a two-thirds vote of the entire membership of the Supreme Council.

SEC. 115. The Constitution of Subordinate Councils and the General Laws of the Order may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting called for the purpose, by a two-thirds vote of the members present.

Article VI.

Widows and Orphans' Benefit Fund.

Chapter I.

SEC. 430. (3) Every applicant upon presenting himself to receive the Degree, on or after the first day of July, 1905, shall pay to the Collector as an assessment for the Widows and Orphans' Benefit Fund the amount prescribed and fixed for his age at the time of receiving the Degree, computed from his nearest birthday,
224 and for the amount of benefit applied for, in and by the following Table of Regular Rates, and the same amount upon each assessment thereafter, until he shall have attained the age of sixty-five years, and thereafter the amount upon each assessment prescribed and fixed in said Table for the assessment at age sixty-five, unless his membership shall have terminated, and unless he shall have changed the amount of his certificate, and unless he shall have selected Option A hereinafter named, in which latter case he shall pay assessments as prescribed and fixed in and by the Table of Special Rates applicable to such option.

Age.	Regular rate.	Option A.
21	$1.89	$2.43
22	1.92	2.49
23	1.95	2.58
24	1.98	2.67
25	2.01	2.76
26	2.04	2.85
27	2.07	2.97

28	2.10	3.06
29	2.13	3.18
30	2.16	3.30
31	2.22	3.39
32	2.28	3.51
33	2.34	3.63
34	2.40	3.75
35	2.49	3.90
36	2.58	4.06
37	2.67	4.26
38	2.79	4.44
39	2.91	4.62
40	3.03	4.85
41	3.18	5.04
42	3.33	5.28
43	3.48	5.49
225		
44	3.63	5.73
45	3.78	6.00
46	3.93	6.24
47	4.11	6.54
48	4.29	6.84
49	4.47	7.20
50	4.65	7.56
51	4.83	7.95
52	5.04	8.34
53	5.25	8.75
54	5.46	9.09
55	5.67	9.42
56	5.88	9.72
57	6.09	10.23
58	6.33	10.77
59	6.57	11.34
60	6.97	11.97
61	7.23	12.63
62	7.65	13.35
63	8.10	14.16
64	8.64	15.06
65	16.08	16.08

(4) Each and every member admitted prior to the first day of July, 1905, shall on and after the first day of October, 1905, pay all assessments to said Fund for and upon his age then on said last named date attained, or to be attained, computed from his then nearest birthday, and for the amount of benefit named in his Benefit Certificate, as prescribed and fixed in the foregoing Table of Regular Rates, and if then, and when, he shall have attained the age of sixty-five years he shall pay all assessments thereafter at the rate prescribed and fixed as aforesaid for said age of sixty-five years.

(5) Members who hold half-rate Certificates shall pay on each

assessment one-half of the amount set forth in the foregoing table of rates for the first amount certificate.

(5) An applicant for membership presenting himself to receive the Degree, may select Option A, hereinafter named, as the plan of his assessment-rate and benefit-amount relation to the Order, and shall pay as his first assessment and each assessment thereafter the amount for his age attained, at the time of receiving the Degree, computed from his nearest birthday, and for the amount of benefit applied for, as prescribed and fixed in the Table of Special Rates applicable to said Option.

(7) A member admitted prior to the first day of October, 1905, may, within the first six months from and after the said first day of October, and not thereafter, elect to change from the Reserve Fund aforesaid and select as the plan of his assessment-rate and benefit-amount relation to the Order one of the Options hereinafter named, provided his attained age renders the same applicable to him, and shall then and thereafter pay assessments, including that for, or payable in, the month in which his selection becomes operative, at the rate for his age then attained computed from his nearest birthday, and for his advancing age, if he shall select Option B, and for the amount of his Benefit Certificate, as prescribed and fixed in the Table of Special Rates applicable to the Option so selected.

(10) A member who, on the first day of October, 1905, is sixty-five years of age or over, or who shall thereafter attain such age, upon making written request therefor to the Supreme Secretary, may in lieu of paying the full amount of his assessment prescribed for him to pay, pay one-half part of such assessment in cash, and the other half part thereof, with five per cent interest thereon compounded annually, shall be charged against his benefit certificate, and deducted from the amount of the benefit payable thereunder at his death; provided, however, that he may pay such interest annually, in which case only the amount of the assessments so charged shall be deducted as aforesaid.

Chapter III.

Payment to the Fund and Suspension for Non-payment.

Sec. 236. Any member failing to pay any regular assessment by or from the time prescribed for such payment by the law of the Order, or to pay any extra assessment within the time limited or prescribed therefor in the notice thereof shall stand suspended from the Order and all benefits therefrom.

Chapter IV.

Levying and Collecting of Extra Assessments.

How Laid.

Sec. 237. (1) Whenever it is the opinion of the Supreme Board, Supreme Secretary and Supreme Treasurer, the condition of the Supreme Treasurer shall make it necessary or expedient to levy an extra assessment for the Widows and Orphans' Benefit Fund, the

Exhibit H.

PAGE BOUND VERTICAL IN BOOK

FINANCIAL.

Term ending.	W. & O. B. Fund. No. of Assessm'ts.	Amount Received.	Amount Paid in Death Ben.	Transfer'd to Emergency Fund.	Amount of Emergency Fund.	Number of Death Benefits Paid.	Cash Balance.	Mortuary Liabilities	Excess of Current Resources over Liabilities.	General Fund. Receipts	Disbursements.	Net Expenses.	Amount of Investment Account	Cash Balance.	Value of Real Estate.
20, 1878	3	$10,569 74	$9,000 00	....	....	3	$358 84	....	....	$10,733 76	$9,157 06	$870 63	....	$1,576 70	....
31, 1879	7	72,623 59	72,000 00	....	....	24	2,193 33	....	....	27,292 38	23,168 47	6,092 60	....	5,700 61	....
31, 1880	6	184,841 29	183,000 00	....	....	61	4,034 62	....	....	31,725 34	28,002 61	10,704 89	$2,050 00	3,423 34	....
31, 1881	8	352,304 41	354,000 00	....	....	119	2,339 03	....	....	25,065 40	25,591 98	19,778 22	4,189 11	8,897 36	....
28, 1882	9	532,659 95	528,000 00	....	....	177	6,978 98	....	....	25,009 99	25,540 23	16,420 02	8,026 61	8,387 12	....
28, 1883	10	708,695 84	697,000 00	....	....	237	16,674 82	....	....	30,458 14	27,719 71	22,226 89	8,026 61	11,105 55	....
29, 1884	11	944,616 47	945,000 00	....	....	319	16,291 29	....	....	29,280 46	40,453 60	23,335 38	8,026 61	9,891 41	....
28, 1885	11	1,087,428 52	1,075,500 00	....	....	365	27,816 42	$82,500 00	$186,827 69	25,164 73	30,153 00	25,261 96	8,026 61	3,268 23	....
31, 1885	10	1,088,096 61	1,086,500 00	....	....	509	59,645 67	133,000 00	55,745 87	37,701 89	36,553 13	28,658 33	7,976 61	4,486 91	....
31, 1886	12	1,548,829 25	1,512,000 00	....	....	657	52,178 77	69,000 00	128,241 68	43,683 18	46,262 77	38,329 96	7,976 61	2,013 08	....
31, 1887	14	1,983,033 10	1,940,500 00	....	....	689	148,087 88	169,500 00	186,897 37	54,040 09	47,008 43	34,921 89	2,494 11	9,049 69	....
31, 1888	14	2,120,609 11	2,024,700 00	....	....	727	159,871 64	166,050 00	170,584 56	75,424 79	73,917 04	55,544 05	10,349 11	10,557 44	....
31, 1889	15	2,258,309 78	2,146,250 00	....	....	923	245,629 40	253,500 00	184,129 40	89,765 59	80,538 07	66,672 22	10,349 11	19,784 96	....
31, 1890	15	2,802,783 96	2,717,352 20	....	....	....	....	....	....	95,612 62	101,002 15	61,780 17	10,349 11	15,395 55	$36,385 08
31, 1891	15	3,129,419 57	3,006,250 00	....	....	1,047	278,798 97	305,750 00	192,048 97	110,568 15	116,150 62	68,408 47	....	9,818 08	51,048 19
31, 1892	15	3,432,883 68	3,401,750 00	....	....	1,158	309,882 65	345,000 00	200,237 65	105,229 04	108,570 50	84,414 20	10,000 00	6,471 53	51,170 97
31, 1893	15	3,698,916 28	3,770,750 00	....	....	1,289	233,048 93	399,000 00	86,348 93	107,754 99	92,407 34	82,059 52	10,000 00	21,819 18	51,170 97
31, 1894	16	4,190,029 75	3,959,599 98	....	....	1,359	483,478 70	349,900 02	381,778 68	128,812 75	119,795 23	98,084 18	19,517 50	25,836 70	51,170 97
31, 1895	15	4,304,007 88	4,195,302 85	....	....	1,445	470,040 46	579,000 00	180,190 46	134,110 31	145,944 21	107,986 92	42,117 50	14,002 80	51,170 97
31, 1896	16	4,882 548 04	4,999,974 18	....	....	1,722	349,914 32	610,250 00	54,654 82	118,032 79	126,716 92	120,146 88	42,117 50	5,318 67	51,170 97
31, 1897	17	5,405,773 57	5,208,072 80	....	....	1,809	544,865 09	606,525 00	237,440 09	143,620 99	135,668 23	128,174 65	42,117 50	13,271 43	51,170 97
31, 1898	15	5,729,417 70	5,279,242 94	$100,000 00	$ 100,000 00	1,881	900,183 62	806,600 00	634,810 71	169,086 78	154,612 55	142,279 14	42,117 50	27,745 68	51,170 97
31, 1899	15	6,512,948 81	6,083,451 87	700,000 00	800,222 07	2,115	632,280 56	733,750 00	424,530 56	175,572 48	186,440 94	155,538 02	66,477 50	16,877 90	51,170 97
31, 1900	12	6,620,536 90	6,277,068 65	493,000 00	1,293,005 35	2,211	485,748 81	754,925 80	267,325 01	188,589 08	192,215 53	180,977 32	65,327 50	13,201 35	51,170 97
31, 1901	12	6,875,975 67	6,595,104 66	160,000 00	1,566,874 92	2,378	616,619 82	726,233 36	469,486 46	205,748 32	217,488 41	205,098 58	65,327 50	1,516 26	51,170 97
31, 1902	12	7,157,866 98	6,899,868 73	210,000 00	1,816,042 79	2,547	664,620 07	685,525 00	584,970 07	226,980 60	213,205 37	196,185 75	65,327 50	15,291 49	51,170 97
31, 1903	12	7,524,886 86	7,317,541 64	185,000 00	2,008,950 60	2,758	733,964 79	733,750 00	640,414 79	240,092 09	205,845 43	198,020 43	65,327 50	60,098 15	51,170 97
31, 1904	12	7,888,909 22	8,155,449 72	....	2,070,579 64	3,132	892,455 82	1,016,450 00	604,199 12	258,064 38	240,076 24	238,800 18	65,327 50	78,026 29	51,170 97
31, 1905	12	8,109,944 37	8,021,412 84	....	1,785,957 66	3,174	1,112,714 54	820,940 47	1,006 774 07	212,075 18	228,566 29	220,410 35	65,327 50	61,536 18	51,170 97
31, 1906	12	8,064,745 48	7,704,498 78	1,000,000 00	2,844,145 97	3,130	756,574 8	701,067 15	55,517 69	206,484 05	207,961 37	204,554 12	65 327 50	60,058 86	51,170 97
31, 1907	12	8,625,321 22	7,980,460 92	1,050,000 00	4,000,100 98	3,295	656,863 82	592,720 25	47,163 57	207,481 09	195,059 51	192,895 15	65,327 50	72,180 44	45,000 00
31, 1908	12	8,418,407 88	7,698,748 90	850,000 00	5,001,906 22	3,241	667,507 57	604,250 12	63,248 45	204,784 61	210,118 40	207,451 15	65,329 50	67,146 65	45,000 00
1909	12	8,206,772 83	7,625,873 00	575,000 00	5,806,247 69	3,241	....	....	....	....	....	....	....	....	....
Totals	399	185,088,645 79	129,482,862 14	....	....	48,098	....	....	....	$3,795,058 16	$3,727,911 51	$3,282,594 83	....	....	....

239 EXHIBIT I.

Revised Laws of Massachusetts, Passed in the Year 1902.

Chapter 119.

Of Fraternal Beneficiary Corporations.

SECTION 1. Seven or more persons, residents of this Commonwealth, may form a fraternal beneficiary corporation for the purpose of providing for the payments of benefits in the case of death or disability, or of both. The disability may be temporary or permanent and the result of sickness or of accident. Any educational, charitable, benevolent or social purpose may be united therewith.

The membership may be limited to members of a particular order, class or fraternity; to the employees of towns, or cities, the commonwealth, or the federal government, or of a designated firm, business house or corporation; or to persons of the same occupation.

If its membership is not limited as above provided, its business shall be conducted on the lodge system, with a representative form of government, and, in such case, the incorporators, their successors and associates, with the officers, expresiding officers, and such persons as may be admitted as representatives, shall be a supreme or governing body, with power to create subordinate bodies by the grant to applicants therefor of charters authorizing those named therein to organize as a subordinate lodge and to admit members after its organization, in accordance with such ritual as the supreme or governing body may prescribe.

SEC. 2. The corporation shall be formed in the manner prescribed in, and be subject to the provisions of sections fifteen to twenty, inclusive, of chapter one hundred and ten, except as follows:

240 The agreement shall omit the statement of the amount of its capital stock and the par value and number of its shares.

All officers shall be elected by ballot and the president shall be included among the officers to be elected at the first meeting of the associates, and no person who has not subscribed the agreement of association shall be eligible as a director or other officer.

The provisions of section six of chapter one hundred and twenty-five shall apply to such corporation, except that the financial officer shall not be required to sign or make oath to the certificate of organization. The by-laws may, unless it is otherwise provided, also prescribe the officers and elective members of standing committees, who may be, ex officio, directors or other officers corresponding thereto; the method of calling its meetings and the notice thereof which shall be given; the right of attendance, individual or representative, at its meetings; the assessments and benefits in case of disability or death, and the conditions upon which the same shall be paid; the amount which shall be deemed one full individual assessment for the respective funds and for calls for fraternal parts thereof; and the loss or forfeiture of membership and benefits, the

method of the amendment of the by-laws and such other provisions as the corporation may determine.

If the corporation conducts its business as a fraternal society on the lodge system, it shall have a ritualistic form of work and no person shall be admitted as a member thereof unless he has previously made a written application therefor, and has been initiated in, and become a member of, a local branch of said corporation. Its by-laws shall provide that meetings of said branches shall be held at least once each month, and may provide that, in addition to representatives chosen by the grand or subordinate bodies, the incorporators, officers, members of standing committees and the ex-presiding officers of the supreme or governing body may be members thereof.

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The certificate of organization and the records shall be submitted to the insurance commissioner, instead of the commissioner of corporations, and he shall perform the duties relative thereto which are required of the commissioner of corporations relative to manufacturing corporations.

The fee to be paid to the secretary of the commonwealth upon the filing of the certificate of organization shall be five dollars.

SEC. 3. Officers chosen at the first meeting of the associates shall hold office until the next meeting of the corporation for the election of officers, the date of which, within two years of the time of organization, shall be prescribed by the by-laws. At such meeting, and thereafter at least biennially, the officers shall be chosen by ballot and shall hold office until their successors are elected and qualified. Standing committees or boards having prescribed duties under the by-laws, including those the members of which are by such by-laws made directors or other officers corresponding thereto, may be constituted by the election of one or more members thereof annually, to serve for not more than three years under any one election. No person shall be elected or appointed to an administrative position for more than three years at any one election or appointment.

SEC. 5. A domestic corporation subject to the provisions of this chapter may hold its annual meetings in any state, in the District of Columbia, or in the Dominion of Canada or a province thereof, if in such state, district or province it has one or more local branches; and its acts at such meetings shall have the same effect as if done within this commonwealth.

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SEC. 6. A corporation duly organized and transacting business under the provisions of this chapter, which conducts its business as a fraternal society on the lodge system, or which limits its certificate holders to a particular order, class or fraternity, or to the employees of towns or cities, the commonwealth or the federal government, or of a designated firm, business house or corporation, or to persons of the same occupation may make provision for the payment of benefits in case of death or disability or of both. The funds from which the payment of such benefits shall be made shall be derived only from assessments collected from the members, except as provided in sections eight, nine and ten. The fund from which the expenses shall be defrayed may be derived from a per capita tax,

dues or expense assessments. Such provisions, funds, assessments and payments shall be as required in the by-laws of the corporation. The benefit certificate shall, in effect, provide that if the death of the member therein named shall occur when one full assessment on each member would not amount to the face amount of the maximum certificate of such corporation, then the amount paid the beneficiary thereunder shall not exceed the amount of such full assessment or the proportionate part thereof which said face amount named in such certificate bears to such maximum certificate, but this restriction shall not apply to a corporation which confines its membership to the permanent employees of towns or cities, the commonwealth, or the federal government, nor to a corporation having an emergency or reserve fund, until such fund shall have been exhausted. Such death benefit shall be payable only to the husband, wife, betrothed, child by legal adoption, parent by legal adoption or relatives of, or persons dependent upon, the member named in the benefit certificate but a member of any fraternal beneficiary corporation may,
243 with the consent of the officers thereof, name as beneficiary a home located within this commonwealth and incorporated under the laws thereof, and maintained and supported by any secret fraternity or order for the care and maintenance of its aged, infirm, indigent or unfortunate members, or for the care and support of the wife or widow of such member, or for the care, support and education of minor children of such members or of deceased members, to the extent of the amount disbursed for the benefit of said member, wife, widow or child by such home, at rate of average cost of maintenance thereof, during the period of occupancy of such member, wife, widow or child, with any sums expended for assessments, dues, tax or other payments by such home by reason of such benefit certificates; and, subject to the limitation of this section, another person as beneficiary of the remainder. If a benefit certificate has been lawfully issued and the beneficiary therein named and the husband, wife, betrothed, child, by legal adoption, parent, parent by legal adoption, or persons dependent upon the member named in the benefit certificate have all died, the member with the consent of the officers of the corporation, and under such rules as they may prescribe, may have any other person substituted as beneficiary therein.

SEC. 7. A corporation organized under or conducting its business in accordance with the provisions of this chapter may hold as a death fund belonging to the beneficiaries of members when deceased not more than the amount of three assessments from a general or unlimited membership, or of three asessments from each limited class or division of its members; and in addition thereto may create, collect, maintain, disburse and apply an emergency fund in accordance with its by-laws, not however, at any time exceeding in amount collected from its members five per cent of the aggregate face
244 value of all its then outstanding benefit certificates. If any part of such fund payable by a member under such by-laws remains unpaid at his decease, it may be deducted from the amount payable to his beneficiary or beneficiaries, but any decrease in such face value shall not require a corresponding diminution of such

emergency fund. The emergency fund shall be used only for the payment of death or disability benefits. Such death fund while held in trust shall be invested in securities in which insurance companies may invest their capital, or deposited in safe banking institutions subject to sight drafts, for distribution to the beneficiaries aforesaid. Whenever the death fund exceeds, above all known liabilities, the amount of three assessments as aforesaid, such excess shall be transferred to the emergency fund. Such emergency fund shall be invested in securities in which insurance companies may invest their capital, but a part thereof, not exceeding twenty per cent, may be invested in a building for use and occupancy by the corporation as its home office within this commonwealth. Such securities, if registered or recorded, shall be taken and stand in the name of the corporation, and all the securities in which the emergency fund is invested shall be deposited with the treasurer and receiver general; but the corporation may at any time exchange any part of said securities for other authorized securities which the treasurer and receiver general determines are of equal value. No part of said securities shall be withdrawn except upon a requisition signed by three-fourths of the directors of executive committee, or other officers corresponding thereto, and indorsed by the insurance commissioner, setting forth that the same is to be used for the purposes of the trust. The income from securities so deposited shall be paid to the corporation for the uses of the fund as specified in the by-laws. No sale, assignment, release, discharge, or surrender of securities so deposited to or in favor of any obligor, mortgagor or other person, shall be valid against the corporation owning the same, unless the original papers which constitute, or are the evidence of, said securities, are transferred or surrendered to the person entitled thereto, except in case of the actual loss or destruction thereof.

SEC. 8. No part of the death, disability, or emergency funds herein provided for shall be used for any purpose other than those specifically prescribed in this chapter, and no assessment for the disability fund shall be called while there remains on hand of such fund an amount equal to that received from three assessments; but payments for total permanent disability may be made from the death fund if made in a single payment.

No contract under this chapter shall be valid which shall be conditional upon an agreement or understanding that the person to whom the death benefit is made payable shall pay the dues or assessments. Death, disability and expense assessments may be called together, but the proportion to be used for each purpose shall be distinctly stated and the amount received for each fund shall be held and used only in the manner heretofore specified; but transfers from the expense fund to any other fund may be made by the directors.

SEC. 16. No corporation organized or transacting business under the provisions of this chapter shall employ paid agents in soliciting or procuring business; but corporations which transact business as fraternal societies on the lodge system may employ organizers in the preliminary organization of local branches and members, as officers or deputies, to assist members of weaker and inactive local branches

to increase their membership, if their compensation does not depend upon and is not affected by such increase, and corporations
246 which limit their certificate holders to a particular order or fraternity may employ and pay members for securing new members, and any corporation may pay local collectors. Whoever solicits memberships for, or in any manner assists in procuring membership in, or aids in the transaction of business for, a corporation or organization not authorized to do business in this commonwealth, shall be punished as provided in section twenty-one of this chapter. A corporation organized or transacting business under or as defined in this chapter shall, within two months after the adoption by it of an amendment to its by-laws, file with the insurance commissioner a copy thereof, setting forth such amendment distinctly and clearly, and this copy shall be certified by its recording officer.

SEC. 17. The money or other benefit to be paid by a corporation authorized to do business under the provisions of this chapter shall not be liable to attachment by trustee or other process, or be seized, taken, appropriated or applied by any legal or equitable process, or by operation of law, to pay a debt or liability of a certificate holder, or a beneficiary named therein.

SEC. 22. The provisions of chapter one hundred and eighteen, except section ninety-five, shall not apply to corporations organized or admitted under and transacting business authorized by the provisions of this chapter; and corporations or associations heretofore exempted by special laws from the provisions of chapter four hundred and forty-two of the acts of the year eighteen hundred and ninety-nine shall not be subject to the provisions of this chapter."

247 EXHIBIT J.

"Revised Laws of Massachusetts, Passed in the Year 1902.

Chapter 109.

SECTION 1. Every act of incorporation passed since the eleventh day of March in the year eighteen hundred and thirty-one shall be subject to amendment, alteration or repeal by the general court. All corporations which are organized under general laws shall be subject to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them. Corporations shall, notwithstanding such repeal or dissolution, be subject to the provisions of sections fifty-three and fifty-four. Such laws of amendment, alteration or repeal or such dissolution shall not take away or impair any remedy which may exist by law consistently with said sections against the corporation, its members or officers, for a liability previously incurred."

EXHIBIT K FOR IDENTIFICATION.

"COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

To all Persons to whom these Presents shall come, Greeting:

Know Ye; That among the Records of our Supreme Judicial Court holden at Boston within and for said County of Suffolk from the first day of January in the year of our Lord one thonsand nine
248 hundred and six to the first day of January A. D., 1907, it is thus contained the following being the entire record in the case."

(The following is a statement of so much of the said record as is material and necessary to its consideration in connection with the case at bar.)

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

Supreme Judicial Court.

In Equity.

STEPHEN W. REYNOLDS, of Brookline; H. A. CHASE, of Cambridge; George E. Hutchins, of Lowell; Thomas R. Matthews, of Boston; William J. H. Nourse, of Worcester; John C. Sanborn, of Lawrence, and F. E. Ramsdell, of New Bedford, All in the Commonwealth of Massachusetts; William J. Moody, F. H. Weeks, John F. Walsh, Daniel Lanigan, and E. S. Baker, of New York City, in the State of New York; Henry Cram, of Providence, in the State of Rhode Island; Edward A. Barnes, of Detroit, in the State of Michigan; H. C. Cochrane, of Chester, in the Commonwealth of Pennsylvania, and W. F. Van Benthuysen, of Patterson, in the State of New Jersey, Plaintiffs,

v.

SUPREME COUNCIL OF THE ROYAL ARCANUM, a Corporation Duly Established under the Laws of the Commonwealth of Massachusetts, and Having Its Usual Place of Business in Boston in said Commonwealth, Defendant.

249 This Bill was filed and entered in this Court on the twenty-ninth day of November A. D. nineteen hundred and five, and thereupon a subpœna was issued returnable at the Rules holden at Boston aforesaid on the first Monday of January in said year; and in said subpœna said defendant was notified to appear before some one of the Justices of this Court at the Court House, in said Boston, on Tuesday the twelfth day of December inst. at 9½ o'clock A. M., to show cause why an injunction should not issue as prayed for in said bill of complaint.

The exhibit then states due service upon the defendant as shown

by a return of a Deputy Sheriff of said Suffolk County, and sets out the Bill of Complaint in full and also an amended and substituted Bill of Complaint, as follows:

Amended and Substituted Bill of Complaint.

1. The Supreme council of the Royal Arcanum was organized under the general laws of this commonwealth, as a fraternal beneficiary association, its charter being dated November 5, A. D. 1877, and it is now subject to the provisions of Chapter 119, Revised Laws of Massachusetts, and acts in amendment thereof.

2. The plaintiffs are members of said fraternal beneficiary association, and they complain in behalf of themselves and of certain members of said association, expressly authorizing them to act in their behalf, and of all other members of said association who shall join in this bill of complaint.

3. When the plaintiffs became members of the said association they entered into contracts with the corporation, said contracts being expressed in their applications for membership and the certificates issued to each, and in the then existing constitution and by-laws of the association. A printed copy of said constitution and by-laws containing the form of said certificates, is filed herewith and marked A.

4. These contracts required the plaintiffs to pay certain assessments for the purposes of said association, and the plaintiffs have severally made these payments. A small portion of these assessments have been applied to the expenses of the association, the larger part thereof has been expended by the association in the payment of claims arising from the deaths of members, and the balance has been paid into a common fund, known as the emergency fund. These payments have been made under the said contracts, and upon the distinct representation that the corporation would be continued and managed as a fraternal beneficiary association, and that these payments, made as aforesaid, would entitle their beneficiaries to receive, upon their deaths, benefits similar to those received by the beneficiaries of members who died during this period.

5. The business of the association developed rapidly and spread over the greater portion of the United States and Canada. The official reports show that it had a membership of 305,083 on December 31, 1904, and outstanding certificates of $680,000,000. During the year 1904, it collected for death claims $7,868,396.06, exclusive of expenses and dues. It had paid before this date more than $95,000,000 in death benefits, and held an emergency fund of $1,994,757.19.

6. The original plan of collecting assessments remained unchanged until the year 1898. Assessments were levied as required to meet death claims, and each member contributed an amount according to a graded table of rates, the rate of each member being ascertained and applied according to his age at the time of his initiation or entrance.

251 In the year 1898 a different system was introduced, but the same primary table of rates was preserved, and applied according to the member's age at initiation. This new table was constructed by multiplying the rates named in the old table by 21 and dividing these products by 12.

By this method a result was reached which enabled each member to pay his assessments in regular monthly instalments, instead of irregularly and as required, but the plan of insurance was not changed, and each member received the same application of the change proportionately.

These new rates were sufficient to enable the association to pay all death claims as they matured, and enabled the association to accumulate the emergency fund before referred to.

7. The supreme council of the Royal Arcanum met at Atlantic City, N. J., in May, 1905, and repealed the by-laws establishing the rates herein referred to, and adopted, as substitutes therefor, a series of amendments to said by-laws containing new tables of rates, and containing new provisions entirely changing the old relationship of the member to the association and to one another. A special session of the supreme council was held at Put-in-Bay, Ohio, in August, 1905, and further modifications of these by-laws were made in the system of rates. A printed copy of the constitution and by-laws containing these several amendments is filed herewith and marked B. A printed report of these two sessions is filed herewith and marked C.

8. These amendments were adopted without the consent of the plaintiffs, and in violation of their contract rights. Unless they are speedily remedied, they will lead to irreparable loss and hardships for which there can be no adequate legal remedy.

252 They entirely change the plan and purpose of the association, and are based upon principles of calculation radically and essentially different from those to which the plaintiffs assented.

The members are divided into classes making unequal contributions and entitled to different benefits. They contemplate the adoption of term protection for some members, with whole life protection after sixty-five on an advanced rate. They provide for level-premium insurance for others, by means of which each of these members pays into the surplus an amount sufficient to redeem his own contract when it matures.

They provide for a step-rate plan for others, for a diminishing benefit for others, and for a pure term insurance until the age of sixty for others.

They provide for loans to certain members, to be deducted from their benefits.

The old rates provided one plan of assessments and benefits, and applied equally to each member according to his age at entrance, and the substituted plan is applied according to the present attained age of members.

These changes are made upon the theories of life-insurance companies, and are not in accordance with the methods of fraternal beneficiary associations.

9. The essential difference between a life-insurance and a fraternal beneficiary association may be stated thus: The contracts issued by life-insurance companies require the payment of a fixed premium and promise the payment of a fixed amount upon the happening of a specific event. The certificates of fraternal beneficiary associations make no provisions for fixed assessments or fixed benefits. They are indefinite in terms, since the association only agrees to pay a sum not exceeding a specified amount, and has the power to levy such assessments as are needed
253 to meet its expenses and obligations as they arise while the members agree to pay such assessments as may legally be levied upon them without limitation as to number.

The life-insurance companies require of the insured the payment of annual premiums, sufficient on the doctrine of average, with their accumulations, to create a fund adequate to pay the sums due the insured on the happening of the events specified in their policies, which fund is held by the companies, and out of it the losses are paid as they accrue.

The fraternal beneficiary associations are organized upon a wholly different plan, since no fund out of which losses shall be paid as they accrue is placed in the hands of the company, but such losses are met by assessments on the members, made sometimes after the losses have occurred, and sometimes, to a small extent, by way of anticipation. The fraternal beneficiary association simply collects assessments as rapidly as they are required to pay the death claims and the members contribute their assessments upon this agreement.

In the first case each member undertakes to pay the loss on his own policy, and in the latter case the surviving members pay the loss which arises on the death of an associate.

10. At the time of the passage of these amendments the Royal Arcanum had been in existence twenty-eight (28) years, and its membership was nearly 316,000, and its members had arrived at different stages of impairment as insurance risks.

11. The new rates, if generally paid, will lead to the accumulation of a large emergency fund if the present members should remain, amounting to $30,000,000 in twenty years, which accumulation is wholly foreign to the plan of such associations, and
254 contrary to the law governing them, while there are no provisions for safe-guarding or applying such funds, or for protecting the rights of members therein.

12. The effect of the "present age" clause has been to drive many thousands of members from the association already, and it is believed that a greater number are about to leave, and are only restrained from so doing by the active efforts of members, who believe, as they do, that this action was a violation of contract, and that it will be remedied.

13. The effect of the new by-laws is practically as follows: A *number* who joined twenty-five years ago at forty-one years of age, on a $3,000 certificate, paid heretofore the sum of $3.78 for each assessment, or $45.36 per annum. At the same age he would *not* pay under the level-premium table (so called), Option A, the sum of

$5.04 for each assessment, or $60.48 per annum, but by reason of the introduction of the "present age" clause, he is obliged to pay $16.08 for each assessment, or $192.96 per annum, because he has now reached the age of sixty-six years. His assessments are therefore increased over 300 per cent. Another member, who joined five years ago at the same age (41) and paid $45.36 per annum, is now forty-six years of age, and his annual contribution at "present age" is now but $74.88, and the percentage of increase in his case is but 60 per cent.

14. The plaintiffs say that the action of the supreme council in adopting these new rates was unreasonable, unnecessary, inequitable, unjust and illegal, and for these several reasons inoperative and void.

15. The plaintiffs state that they never assented expressly or impliedly to the by-laws adopted, and the passing of these by-laws was beyond the power of the supreme council, and for this
255 reason also they are not of binding force and virtue.

Wherefore the plaintiffs pray:

First. That the supreme council of the Royal Arcanum, its officers, agents, servants and subordinate councils and officers, be enjoined from enforcing the said by-laws adopted at Atlantic City, N. J., and modified at the special session held at Put-in-Bay, Ohio.

Second. That until the further order of this court they be enjoined from taking any steps to terminate the connection of the plaintiffs or any other member with or their right in the defendant or its property on account of such member's refusal to pay assessments under the new by-laws, provided that assessments at the rate fixed by the past previous by-laws are duly paid or rendered by such members whenever assessments are called.

Third. Said supreme council be ordered to collect assessments in accordance with by-laws and the table of rates which were in force before May, 1905.

Fourth. That such further or other relief may be granted as to this honorable court may seem just and proper.

MOORFIELD STORREY.
JOHN P. LEAHY.

The exhibit then recites an order of the Court requiring the answer of the defendant to be filed by January 12th, 1906, and then sets out in full the answer to said Amended and substituted Bill of Complaint, of the defendant, wherein "the defendant demurs to the plaintiffs' bill, on the ground that the same does not set forth or show any illegality or invalidity in the amendments of the
256 laws of the order therein complained of, or any ground or reason for avoiding the same, or any violation by the defendant of any legal or equitable rights of the plaintiffs, or either of them, or that the plaintiffs have any right or ground of relief in equity against the defendant.

And without waiving the foregoing demurrer, the defendant makes further answer to the said bill,"—the remainder of said answer consisting of denials of various allegations contained in the complaint and the statement of certain substantive grounds of de-

fense relied upon by the defendant, and especially that the changes complained of were authorized by diverse corporate and statutory enactments; that such changes were reasonable and necessary and in accordance with the original plan and purpose of the defendant, and that the action of the plaintiff was not authorized by the statutes of Massachusetts.

The exhibit further recites "And on the second day of March in said year, the cause was submitted to the Court by the parties upon a certain Agreed Statement of Facts, as follows, to wit:

Agreed Facts.

(1) The supreme council of the Royal Arcanum is a corporation organized under the general laws of this commonwealth as a fraternal beneficiary association. Its charter was dated November 5, 1877, and it is now subject to the provisions of chapter 119, Revised Laws of Massachusetts, and acts in amendment thereof.

(2) The plaintiffs are members of this association in good standing, and have paid all assessments required by their contracts, and this bill is brought in their own behalf, and for the benefit of others who may join therein.

257 (3) The supreme Council of the Royal Arcanum is the governing body of the order, and establishes subordinate councils, into which members are admitted in accordance with certain ritualistic forms and ceremonies, after the application of certain preliminary tests, and upon conditions prescribed by the supreme council. In addition to its charitable, fraternal, and social objects, it raises money by assessments for the purpose of paying death benefits to the relatives or beneficiaries of deceased members. It is carried on for the sole benefit of its members and persons related to or dependent upon them, and without any financial profit.

(4) Its growth throughout the United States and Canada has been very great, and its membership on January 1, 1905, is indicated by the accompanying table:

Age.	Members.	Certificates.	Age.	Members.	Certificates.
21.....	2,465	$3,594,000	30.....	8,596	15,169,500
22.....	4,133	6,072,000	31.....	8,932	16,369,000
23.....	5,106	7,516,000	32.....	8,775	16,479,500
24.....	5,952	8,747,000	33.....	8,955	17,215,000
25.....	6,499	9,912,000	34.....	9,605	19,565,500
26.....	6,929	10,616,500	35.....	9,686	20,217,500
27.....	7,463	11,733,500	36.....	9,642	20,698,000
28.....	7,999	12,969,500	37.....	9,739	21,430,000
29.....	8,267	14,029,500	38.....	9,490	21,230,000
258					
39.....	9,199	20,993,500	43.....	9,476	22,949,500
40.....	9,366	21,847,000	44.....	9,229	22,756,000
41.....	9,004	21,160,500	45.....	8,621	21,407,500
42.....	9,369	22,224,000	46.....	8,261	20,683,000

Age.	Members.	Certificates.	Age.	Members.	Certificates.
47.....	7,927	20,132,000	66.....	1,391	4,019,000
48.....	7,344	18,758,000	67.....	1,109	3,194,500
49.....	7,045	18,053,000	68.....	949	2,715,000
50.....	6,592	17,028,000	69.....	766	2,218,500
51.....	6,278	16,273,000	70.....	664	1,906,000
52.....	5,786	15,101,500	71.....	543	1,551,000
53.....	5,790	15,228,500	72.....	467	1,359,500
54.....	5,600	14,667,500	73.....	337	996,000
55.....	5,115	13,664,500	74.....	301	873,000
56.....	4,493	12,146,000	75.....	203	585,500
57.....	4,123	11,389,000	76.....	191	564,000
58.....	3,730	10,424,500	77.....	111	324,500
59.....	3,498	9,895,500	78.....	124	346,500
60.....	3,014	8,557,500	79.....	98	274,500
61.....	2,662	7,596,500	80.....	79	220,500
62.....	2,407	6,819,000	81.....	61	178,000
63.....	2,167	6,230,500	82.....	25	54,000
64.....	1,857	5,331,500	83.....	32	96,000
65.....	1,576	4,511,500			
				305,083	$680,848,000

(5) The by-laws of the corporation in force at the time of the admission of the plaintiff earliest in point of membership, provided for subsequent amendments, as follows:

"SECTION 1. The Constitution of this Supreme Council and the Laws governing the W. & O. B. Fund, shall not be altered or amended except by a three-fourths vote of the members present at a regular meeting, or at a special meeting called for the purpose; and all proposed amendments must be presented in writing, signed by three or more members, and referred to the Committee on Laws, who shall report thereon at the next daily session, except when an amendment shall have been proposed upon the last day of the meeting, in which case it shall not be acted upon until the next annual or special meeting.

"SECTION 2. The Constitution of Subordinate Councils and the Laws of this Supreme Council, except those relating to the
259 Widows and Orphans' Benefit Fund, may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting called for the purpose, by a two-thirds vote of the members present; provided that such amendment shall be presented in writing, signed by three or more members, and referred to the Committee on Laws for their report before being acted upon."

At the regular session of the supreme council in 1890, these sections were amended to read:

"SECTION 114. The Constitution of the Supreme Council and the Laws governing Grand Councils, the Widows and Orphans' Benefit Fund, Benefit Certificates and Medical Examinations may be altered or amended at any regular meeting of the Supreme Council or at a special meeting called for the purpose by a three-fourths vote of the entire membership of the Supreme Council.

"SECTION 115. The Constitution of Subordinate Councils and the General Laws of the Order may be altered or amended at any regular meeting of the Supreme Council, or at a special meeting called for the purpose, by a two-thirds vote of the members present."

At the 1904 session section 114 was amended by substituting "two-thirds" for "three-fourths." A copy of the constitution and laws in force on May 1, 1905, is hereto annexed as a part hereof, marked A.

(6) The original plan of collecting assessments was as follows:

"Law I.

SECTION 1. Every member upon presenting himself to receive the Degree, shall pay to the Collector the following rates or half
260 rates for the Widows and Orphans' Benefit Fund, and the same amount on each assessment thereafter, whilst he is a member of this Order, viz:

Between the ages of	21	and	22	$1.00
"	"	22	23	1.04
"	"	23	24	1.08
"	"	24	25	1.12
"	"	25	26	1.16
"	"	26	27	1.20
"	"	27	28	1.24
"	"	28	29	1.28
"	"	29	30	1.32
"	"	30	31	1.38
"	"	31	32	1.44
"	"	32	33	1.50
"	"	33	34	1.56
"	"	34	35	1.62
"	"	35	36	1.68
"	"	36	37	1.74
"	"	37	38	1.80
"	"	38	39	1.86
"	"	39	40	1.96
"	"	40	41	2.06
"	"	41	42	2.16
"	"	42	43	2.26
"	"	43	44	2.36
"	"	44	45	2.46
"	"	45	46	2.58
"	"	46	47	2.70
"	"	47	48	2.82
"	"	48	49	2.96
"	"	49	50	3.10
"	"	50	51	3.26
"	"	51	52	3.42
"	"	52	53	3.60
"	"	53	54	3.80

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"	"	54	55	4.00
"	"	55	56	4.30
"	"	56	57	4.70
"	"	57	58	5.20
"	"	58	59	5.80
"	"	59	60	6.50

All such payments shall be known as the Widows and Orphans' Benefit Fund. The date of such payment shall be kept by the Collector, and the brother credited with the same. No member shall be assessed for a death that occurs prior to the day of his receiving the Degree."

The foregoing rates were upon the basis of a benefit certificate of $3,000. In 1883 this law was amended so that no members were admitted after becoming fifty-five years of age. Only a very small number of persons were ever admitted at an age in excess of fifty-five years. In 1887 the order had only 137 members who were over sixty-five years of age.

(7) Until 1898 assessments were levied only as required to meet current claims, and the amount contributed by each member was determined by the foregoing table of rates, the rate being ascertained and applied according to the age of the member at the time of his initiation or entrance. The number of assessments and of members in each year down to 1898 is shown by the following table:

Year ending December 31—	Number of assessments called.	Number of members.
1877	3	1,384
1878	7	7,667
1879	6	17,374
1880	8	25,712
1881	9	36,257
1882	10	40,102

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1883	11	47,967
1884	11	54,048
1885	10	60,955
1886	12	70,696
1887	14	79,170
1888	14	86,922
1889	13	97,945
1890	15	111,425
1891	15	124,276
1892	15	137,183
1893	16	148,251
1894	16	159,307
1895	15	174,060
1896	16	190,261
1897	17	195,105

(8) In the year 1898 the law relating to assessments was amended so as to read as it appears in section 430 of Exhibit A. At the same time provision was made, under authority of St. 1894, now amended by St. 1898, c. 474, sec. 11, and St. 1899, c. 442, sec. 12, for the creation of an emergency fund. These amendments went into effect August 1, 1898, and no objection thereto has ever been made by any member of the order.

(9) The membership and the receipts and payments on amount of the widows and orphans' benefit fund from the time of the adoption of the amended rates from 1898 to 1905 were as follows:

Year: 1898. Members: 189,184. Receipts: $5,734,561.47. Payments: $5,279,242.94. Surplus: $455,318.83. Amount transferred to emergency fund: $100,000.

Year: 1899. Members: 193,868. Receipts: $6,515,548.81; Payments: $6,083,451.87. Surplus: $432,096.04. Amount transferred to emergency fund: $700,000.

263 Year: 1900. Members: 210,674. Receipts: $6,620,536.90. Payments: $6,277,058.65. Surplus: $343,468.25. Amount transferred to emergency fund: $490,000.

Year: 1901. Members: 231,132. Receipts: $6,875,975.77. Payments: $6,595,104.66. Surplus: $280,871.01. Amount transferred to emergency fund: $150,000.

Year: 1902. Members: 234,322. Receipts: $7,157,868.98. Payments: $6,899,868.73. Surplus: $258,000.25. Amount transferred to emergency fund: $210,000.

Year: 1903. Members: 283,089. Receipts: $7,534,886.36. Payments: $7,320,541.64. Surplus: $204,244.72. Amount transferred to emergency fund: $135,000.

Year: 1904. Members: 305,083. Receipts: $7,883,909.22. Payments: $8,155,449.72. Deficit: $271,540.50. Amount transferred from emergency fund to benefit fund for current liabilities: $300,000.

(10) The annual session of the defendant was held at Atlantic City, N. J., in May, 1905, and the amendments to the by-laws relating to assessments complained of in this suit were duly adopted. A special session of the defendant was held at Put-in-Bay, Ohio, from August 30, 1905, to September 5, 1905, at which certain modifications of these amendments were duly adopted. The official reports of these two sessions, and the facts therein stated, are made a part of this statement, marked B. A published copy of the constitution and laws of the order, as so amended, is also made a part of this statement and marked C.

The original table of rates exhibited in clause 6 of this statement was used in computing the table of rates in use since 1898, found in section 430 of Exhibit A herein referred to. This latter
264 table was produced by multiplying each of the rates in the said original table by 21, and then dividing these products by 12. This made it possible to collect assessments regularly each month, while the original basis of assessments was preserved, with provision for an emergency fund and extra assessments.

Under this plan the order paid its obligations promptly, and accu-

mulated a surplus or emergency fund amounting, with interest, on December 31, 1904, to $2,070,597.64, although the annual transfers to this fund gradually decreased each year until 1904, when there was a deficiency of $271,540.50 in the ordinary death fund, and in 1905 the executive committee withdrew a certain amount from this emergency fund to cover this deficiency. These figures appear in detail in clause 9 of this statement.

All of the members paid according to these rates on certificates of $3,000, and pro rata according to these rates on certificates of lesser amount. The amount collected was sufficient to cover the current mortality cost of the death claims as they accrued, and to accumulate the emergency fund down to 1904. This, with the exception of the provision relating to the emergency fund, was the usual plan among fraternal beneficiary associations, and the one in force when each of the plaintiffs joined the order.

The plaintiffs held certificates, under which the defendant agreed to pay sums "not exceeding" a specific amount named, and the defendant reserved the right to levy additional assessments as required. The rates were not based upon actuarial calculations, but graded so that the members paid a rate determined according to their ages at the time of initiation, the amounts varying from $1 to $6.50, in accordance with the ages of said members at the time of entrance. This system of benefits and assessments was freely
265 advertised and explained, and each of the plaintiffs entered the order with a full knowledge thereof.

Prior to the session of the supreme council in May, 1905, the executive committee of the supreme council caused mortality tables of the order to be prepared, and submitted them to actuaries for examination, and these actuaries prepared for them certain new tables, each the mathematical equivalent of the others, and recommended these tables for adoption, and also recommended the abandonment of the former table of rates. These new tables are prepared on the basis of the new mortality tables according to the formulas known to actuaries, and follow in substance the usual plans used by life-insurance companies in preparing tables for the computation of net premiums, with the exception that the rates of assessment are discounted in advance for lapsation, so that all members may participate equally in profits from that source. The four tables found in Exhibit C (the first being the regular rates and the others optional alternatives) were recommended by said committee for adoption, and these were formally adopted at this session. These actuaries made their calculations as they would have done if employed for a similar purpose by a life-insurance company, but the right of the order to levy additional assessments was not affected.

A life-insurance contract is an agreement to pay a fixed amount on death for a fixed annual premium during life. The tables presented are based upon the payment by the order of the maximum value of each certificate, and the payment by the member of a rate adequate, without further modification or assessment, to pay this certificate at the maturity thereof.

Competent actuaries would testify, and the case may be taken as

though they had testified, that the old plan of assessment was faulty,
according to the assumptions made by actuaries, and that the
266 order could not meet the maximum face of its certificates per-
manently under it; that upon their assumptions a change was expedient or necessary; that the plans proposed and adopted were mathematically correct; that if the members paid the amounts fixed in these tables the order could continue to pay the maximum face value of its certificates at their maturity; that such amounts are no higher than necessary for this purpose, and that they fairly and equitably apportion among the members their contributions to the widows' and orphans' benefit fund, taking into consideration their age and risk.

The plaintiffs do not controvert this evidence in this case, but reserve the right to discuss its materiality, the basis and theories upon which it rests and its application to this case.

(11) The agreements between the plaintiff and the defendant concerning assessments and benefits are not contained in any one specific instrument, but are found in the application for membership, the benefit certificate, the laws of Massachusetts constituting the charter, and the constitution and laws of the order. These instruments, and the statutes of Massachusetts concerning fraternal beneficiary corporations, are made a part of this statement. The statements in the reports of the committees on deficits and on assessments, which are found in Exhibit B, are made a part of this statement.

(12) The membership of the order on January 31, 1906, was 259,869; of whom 251,291 paid assessments on the regular rates; 6,824 had taken Option A, 1,289 Option B, and 465 Option C.

It is also agreed that the court may find such other facts, not in conflict with the foregoing, as may be material to the decision of the issues in this case.

JOHN P. LEAHY,
Attorney for Plaintiffs.
CURTIS H. WATERMAN,
Attorney for Defendant."

267 The exhibit further shows that upon the filing of the Agreed Facts above set forth the following order was entered by the Justice of the Supreme Judicial Court:

"Reservation.

At the request of the parties, this cause is reserved, upon the pleadings and agreed facts, for the consideration and determination of the full court, such decree to be entered as justice and equity may require.

March 2, 1906.

HENRY K. BRALEY, *J. S. J. C.*"

The exhibit recites "Thereupon a hearing was had, and at the request of the parties the cause was reserved by the Justice who presided at he hearing for the consideration of the full Court such decree to be entered as justice and equity might require.

And now, afterwards, to wit, on the eighteenth day of May, A. D., nineteen hundred and six it is ordered by the said Supreme Judicial Court for the Commonwealth by its Rescript that the Clerk of this Court for said County of Suffolk make the following entry under this case in the Docket of the Court, viz:

'Bill dismissed with Costs,' as per Rescript on file."

Commonwealth of Massachusetts.

SUPREME JUDICIAL COURT,
Suffolk, ss:

I, Walter F. Frederick, Clerk of said Court, hereby certify that the foregoing is a true copy of the record in the case of
268 Stephen W. Reynolds and others against the Supreme Council of the Royal Arcanum.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this eleventh day of June, A. D., 1910.

[SEAL.] WALTER F. FREDERICK, *Clerk.*

Commonwealth of Massachusetts.

I, Marcus Perrin Knowlton, Chief Justice of the Supreme Judicial Court of the Commonwealth of Massachusetts, Do Certify that Walter F. Frederick, Esquire, whose signature is affixed to the paper hereto annexed, is Clerk of said Court, holden at Boston, in and for the County of Suffolk, in said Commonwealth, and hath the keeping of all the ancient files, records, and proceedings of said Court throughout the Commonwealth, down to the first day of August, A. D., 1797, as well as of the files, records, and proceedings of said Court holden as aforesaid, for said County of Suffolk, subsequent to that time; and is, by law, the proper person to make out and to certify copies of all the records and proceedings of the said Supreme Judicial Court previous to the said first day of August A. D., 1797, as well as of all records, and proceedings of the said Court, holden as aforesaid, for the said County of Suffolk, subsequent to that time; and that full faith and credit is and ought to be given to his acts and attestations, done as aforesaid, and that his attestation to the paper hereunto annexed is in due form.

In Testimony Whereof, I have hereunto set my hand, and caused the seal of said Court to be hereunto affixed, this eleventh day of June in the year one thousand nine hundred and ten.

[SEAL.] MARCUS P. KNOWLTON.

269 Commonwealth of Massachusetts.

SUFFOLK, *ss:*

I, Walter F. Frederick, Clerk of the Supreme Judicial Court within and for said County of Suffolk, hereby certify that the Honorable Marcus Perrin Knowlton, by whom the foregoing certificate was made, and who has thereunto subscribed his name, was at the time of making thereof, and still is, Chief Justice of the Supreme

Judicial Court of said Commonwealth, duly commissioned and qualified; to all of whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In witness whereof, I have hereto set my hand and affixed the seal of said Court, this eleventh day of June in the year of our Lord one thousand nine hundred and ten.

[SEAL.] WALTER F. FREDERICK, *Clerk.*

The foregoing case contains all the evidence taken upon the trial of this action.

Stipulation Settling Case.

It is hereby stipulated that the foregoing case contains all the evidence given upon the trial of this action and that the same be settled and ordered to be filed and annexed to the judgment roll herein.

Dated, New York, October —, 1910.

FOLEY & POWELL,
Attorneys for Defendants-Appellants.
F. J. MOISSEN,
Attorney for Plaintiff-Respondent.

270 *Order Settling Case.*

On the above stipulation the foregoing case on appeal, containing all the evidence, is hereby settled and ordered on file.

Dated, New York, Nov. 4, 1910.

WILLIAM J. KELLY, *J. S. C.*

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll, and case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of Kings; and certification thereof by the Clerk, pursuant to Section 1353, is hereby waived.

Dated, New York, October 31st, 1910.

FOLEY & POWELL,
Attorneys for Defendants-Appellants.
F. J. MOISSEN,
Attorney for Plaintiff-Respondent.
J. F. M. R.

271 *Opinion.*

Supreme Court, Special Term, Kings County, July, 1910.

SAMUEL GREEN
ag'st
SUPREME COUNCIL OF THE ROYAL ARCANUM.

Suit for Injunction.

Opinion.

F. J. Moissen, for plaintiff.
Henry A. Powell, for defendant.

KELLY, *J.:*

There is nothing which I can add to the legal literature affecting the question before the court in this case. From the view I take of the recent decisions of the Court of Appeals in Wright vs. Maccabees, 196 N. Y., 391 and Dowdall vs. C. M. B. Ass'n, 196 N. Y., 405, it has been settled as the law in this state that a general power reserved by a society like the defendant to amend its by-laws or constitution does not authorize an increase in the amount of the assessment on the individual member fixed in the original contract of the parties. This contract is found in the application for membership, the by-laws in existence at the time and the certificate issued to the member. (Beach vs. Maccabees, 177 N. Y., 100.) An agreement on the part of the member to be governed by the laws, rules and regulations of the organization in force at the date of his admission "or that may be hereinafter enacted by the Supreme Council to govern said Council and Fund" (the said fund in the case
272 at bar being the Widows' and Orphans' Fund made up from the assessments levied on the individual members) is not sufficient to warrant the society in increasing the amount of the individual assessment. It is not sufficiently definite and explicit. A change in the law governing the Council or the Widows' and Orphans' Fund might well be necessary or desirable, and be referred to in the original contract with propriety but such reference falls short of an agreement by the applicant that the society should have an unlimited reserved power to increase the amount of the assessments, to an extent which might be prohibitive and could only result in depriving the individual of his membership. In the case at bar the original assessment agreed upon was one dollar and eighty cents. This was in 1883. In 1898 the number of assessments was changed so as to be one a month, and the rate was raised to three dollars and sixteen cents. The plaintiff agreed to this change. In 1905, the Supreme Council increased the rate to six dollars and eighty-seven cents, one assessment every month. The plaintiff objected and has been paying under protest ever since. In February, 1910, he sent a check for $3.16 to pay an assessment then levied,

and it was refused. He thereupon commenced this action to enjoin the defendant from suspending him and asking a judgment establishing the $3.16 rate as the fixed amount to be paid by him. It may be noted that the defendant has expressed its intention to again increase the amount of the plaintiff's assessment so that it will be between sixteen and seventeen dollars for each assessment, when the plaintiff reaches sixty-five years of age in a year or two. It seems to me that the only question is, was this the bargain made when the plaintiff became a member of the Society in 1883? If the defendant reserved a power to do this, if the agreement was that the plaintiff was willing to pay a comparatively low amount
273 of insurance, on the theory, that if he died at an early age he would have the benefit of the low rate, but that if he lived to be sixty-five the society might increase the premium to any amount which might be necessary, why then the plaintiff has no legal grievance. But clearly no such agreement was made or contemplated. If that was the plan of the organization it should have been so stated. Judge Cullen writing in Beach vs. Maccabees, 177 N. Y., 100, points out the necessary definiteness—the explicit language which might have been used if there was any such intention, he says: "So in the present case if the certificate had provided that the payments therein specified should be subject to such modification as to the amount, terms and conditions of payment and contingencies in which the same were payable as the endowment laws of the Order from time to time might provide, the amendments would be applicable to existing members. But I think that nothing less explicit than this appearing in the certificate itself should be effective for such a purpose." Of course the Beach case as well as the Langan case (174 N. Y., 267), referred to an attempt on the part of the various defendants to reduce the amount to be paid in case of disability or death, and not to an increase in the assessment, but the reasoning in one case appears equally applicable in the other.

In Wright vs. Maccabees, 196 N. Y., 391, the right of the defendant to increase the amount of the individual assessment was squarely presented to the Court of Appeals. In that case the plaintiff bound himself to conform to the laws of the defendant in force at the time of his admission, "now in force or that may be hereafter adopted." The plaintiff contested the right of the defendant to increase his assessments. On the first trial Mr. Justice Rogers
274 at Special Term, held that he had a vested right to continue a member upon paying the assessment mentioned in the original contract (48 Misc., 558). The Appellate Division reversed the Special Term (122 App. Div., 904), upon the authority of Mock vs. Supreme Council, 121 App. Div., 474, the latter case being in this department. In the Mock case the Appellate Division held that because of the peculiar relation of the members of these organizations, the fact that they were insurers as well as insured, the individual must have understood that changed conditions might bring about necessity for increased assessments. And so the case of Wright vs. Maccabees went back for retrial and the judgment was for the defendant. This judgment was affirmed without opinion

by the Appellate Division (128 App. Div., 833). The Court of Appeals reserves the judgment holding that the right of the plaintiff to pay his assessments at the old rate was a vested right immune from change by amendment in the absence of a specific reservation to amend in that particular. The case of Dowdall vs. Catholic Mutual Benefit Ass'n, 196 N. Y., 405, is to the same effect, although the right to make new laws was not apparently reserved or attempted to be reserved in that case. But the Mock case is referred to in the opinions of the Court of Appeals in each of the cases cited, and I think the intention of the Court, to reverse the doctrine laid down by the Appellate Division is apparent. So I must find for the plaintiff. The various arguments urged by the learned counsel for the defendant in the case at bar, are discussed in the Wright and Dowdall cases in the Court of Appeals. The conceded necessity for increased revenue is held to be no answer to the claim of the individual that his right to pay at the old rate is a vested contract right. I am free to say that the plaintiff's contention is
275 from some points of view academic, because the right of the defendant to increase the number of the assessment, instead of increasing the amount of each assessment, does not appear to be disputed. In other words, the litigation appears to be over the question whether the plaintiff being obligated to pay a given amount, shall pay it in twelve installments or twenty-four. But however, that may be, plaintiff appears to be right in the principle asserted and he is accordingly entitled to judgment. On the collateral question involved, I find that plaintiff is not barred from maintaining the action by laches; he has been protesting regularly, and while he might have commenced his action earlier, still he had practically a new cause of action with every assessment demanded at the increased amount. Nor is he estopped by the payments made under protest, either as to the defendant who was not misled as to his position, or as to new members who must be held familiar with the organization, its rules and by-laws. I also hold that although the defendant is a Massachusetts corporation, still, when it comes in the State of New York, conducting business here, under the supervision and permission of the State Insurance Department, contracts made here, with residents of this state, in Councils organized and existing in this state, and to be performed here are to be interpreted under the laws of the State of New York.

There must be judgment for the plaintiff with costs.

276 *Order Filing Record in Appellate Division.*

Pursuant to Section 1353 of the Code of Civil Procedure, it is

Ordered, that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court, in the Second Judicial Department.

Dated New York, Nov. 4, 1910. *1910.*

WILLIAM J. KELLY, *J. S. C.*

J. E. M. R.

STATE OF NEW YORK,
County of Kings, ss:

I, Henry P. Molloy, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record), do hereby certify that I have compared the annexed with the original case on appeal, order, judgment & notice of appeal in my office and that the same is a true transcript thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court, this 19 day of June 1911.

[Seal Kings County.]

HENRY P. MOLLOY, *Clerk.*

277 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, held at the Capitol, in the City of Albany, on the 10th day of December, in the year of our Lord one thousand nine hundred and twelve, before the Judges of said Court.

Witness, the Hon. Edgar M. Cullen, Chief Judge, Presiding.
R. M. BARBER, *Clerk.*

Remittitur Dec. 11th 1912.

SAMUEL GREEN, Appellant,
ag'st
SUPREME COUNCIL OF THE ROYAL ARCANUM and Ano., Respondents.

Be it remembered, That on the 22nd day of June, in the year of our Lord one thousand nine hundred and eleven Samuel Green the appellant in this action, came here into the Court of Appeals by F. J. Moissen, his attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department.

And Supreme Council of the Royal Arcanum and ano. the respondents, in said action afterwards appeared in said Court of Appeals by Foley & Powell, their attorneys,

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. F. J. Moissen, of counsel for the appellant, and by Mr. Howard C. Wiggins, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed
277¼ from herein be and the same hereby is reversed and judgment of the Special Term affirmed with costs in both Courts.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said order of the Appellate Division be reversed and Judgment of the Special Term affirmed, with costs in both Courts as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Dec. 11th*, 1912.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers or-ginally filed therein attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

277½ At a Term of the Appellate Division of the Supreme Court Held in and for the Second Judicial Department at the Borough of Brooklyn on the 19th Day of May, 1911.

Present—Hon. Almet F. Jenks, Presiding Justice.
" " Michael H. Hirschberg,
" " Joseph A. Burr,
" " William J. Carr,
" " John Woodward,
Justices.

SAMUEL GREEN, Respondent,
vs.
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent, &c., Appellants.

Order of Reversal on Appeal from Judgment.

The above named Supreme Council of the Royal Arcanum and Val M. Schmitz, the defendants in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Kings on the 23rd day of July, 1910, and the said appeal having been argued by Mr. Howard C. Wiggins of Counsel for the appellant and by Mr. F. J. Moissen, of Counsel for the Respondent, and due deliberation having been had thereon,

It is hereby ordered and adjudged that the judgment so appealed from be and the same hereby — reversed, upon questions of fact and of law, and new trial granted, costs to abide the final award of costs.

Opinion by Burr, J. Jenks, P. J., Carr and Woodward, JJ., concur; Hirschberg, J. dissents.

Enter.

ALMET F. JENKS, *P. J.*

278 Supreme Court, Appellant Division, Second Judicial Department.

CLERK'S OFFICE, BOROUGH OF BROOKLYN, N. Y.

I, John B. Byrne, Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department, do hereby certify that the foregoing is a copy of the order made by said court upon the Appeal in the above entitled action, and entered in my office on the 19th day of May, 1911, and that the original case or papers upon which said appeal was heard are hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this 19th day of May, 1911.

[SEAL.] JOHN B. BYRNE, *Clerk.*

[Endorsed:] Supreme Court. Appellate Division. Second Judicial Department. Order of Reversal on Appeal from Judgment.

279 Supreme Court, Kings County.

SAMUEL GREEN, Respondent,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Appellants.

Judgment of Reversal, May, 1911.

The above named Appellants, Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent, &c., the defendants in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the Office of the Clerk of the County of Kings on the 23rd day of July, 1910, and the said appeal having been brought on for argument, and the argument of counsel for the respective parties having been heard and considered and the Appellate Division having sent hither its remittitur by which it appears that the said Appellate Division has reversed said judgment and granted a new trial with costs to abide the final award of costs.

Now, on motion of Foley & Powell, attorneys for the said appellants,

It is Adjudged that the judgment so appealed from be and the same is hereby reversed and a new trial granted with costs to abide the final award of costs.

HENRY P. MOLLOY, *Clerk.*

O. K.
M. J. K.

280 N. Y. Supreme Court, County of Kings.

SAMUEL GREEN, Appellant,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Respondents.

GENTLEMEN: Take notice that Samuel Green, Appellant, hereby appeals to the Court of Appeals of the State of New York from the Order made and entered of the Appellate Division of this Court, bearing date the 19th day of May 1911, reversing the Judgment in his favor made and entered on the 23d day of July, 1910, upon which Order, Judgment of reversal was entered in the Office of the Clerk of the County of Kings on the 24th day of May, 1911, and from the whole and every part of said Order and Judgment.

And it is hereby stipulated in accordance with the provisions of the Code of Civil Procedure that should said Appeal be dismissed or said Order and Judgment be affirmed by said Court of Appeals that Judgment absolute be rendered in favor of the Respondents and against the Appellant.

Dated Brooklyn June 13th, 1911.

F. J. MOISSEN,
Attorney for Appellant,
58 *Douglass Street, Brooklyn, N. Y.*

To Foley & Powell, Esq., Attorneys for Respondents, Henry P. Molloy, Esq., Clerk, &c.

O. K.
M. J. K.

281 At a Special Term of the Supreme Court of the State of New York Held at the Court-House, Brooklyn, Kings County, on the 30th Day of December, 1912.

Present: Honl. Isaac M. Kapper, Justice.

SAMUEL GREEN, Appellant,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Respondents.

Judgment having been recovered by Samuel Green the Appellant against Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, Respondents, at a Special Term of this Court on the 23rd day of July 1910 from which Judgment *on* Appeal was taken by said Respondents to the Appellate Division of this Court for the Second

Judicial Department which Appellate Division by its Order dated the 19th day of May 1911 reversed the said Judgment and Judgment of reversal upon such Order having been entered in the Office of the Clerk of the County of Kings on the 24th day of May 1911, and the Appellant, Samuel Green, having appealed from said Order and Judgment of reversal to the Court of Appeals of the State of New York: And said Appeal having been heard by said Court of Appeals and after due consideration thereof said Court of Appeals having duly rendered its decision on the 11th day of December 1912 reversing the above-mentioned Order of the Appellate Division and affirming the Judgment rendered at Special Term as above men-
282 tioned with costs in both Courts as appears from the Remittitur of said Court of Appeals sent hither which Remittitur also contains a provision to this Court directing this Court to proceed thereon as provided by law. Now on reading and filing said Remittitur and on motion of F. J. Moissen, Attorney for the Appellant Samuel Green,

It is hereby ordered that the above mentioned Judgment be and the same hereby is made the Judgment of this Court and the Clerk is hereby ordered to enter Judgment herein accordingly.

Enter.

I. M. K., *J. S. C.*

Granted Dec. 30, 1912.
CHARLES S. DEVOY, *Clerk.*

O. K.
T. F. S.

12–30–1912.

283 [Endorsed:] N. Y. Supreme Court. Samuel Green, Appellant, vs. Supreme Council of the Royal Arcanum et al. Resp'd'ts. Copy. Order of Reversal. F. J. Moissen, Att'y for Appl't, 561 73rd St., Brooklyn, N. Y.

284 N. Y. Supreme Court, County of Kings.

SAMUEL GREEN, Appellant,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Respondents.

Judgment. December 30th, 1912.

Judgment having been rendered in favor of the Appellant, Samuel Green, against the Respondent, Supreme Council of the Royal Arcanum and entered on the 23rd day of July 1910, and the Respondents having appealed from said Judgment to the Appellate Division of this Court for the Second Judicial Department which Appellate

Division by its order dated the 19th day of May 1911 reversed said Judgment and Judgment of reversal on such order was entered on the 24th day of May 1911, and the Appellant Samuel Green having appealed from said Order of the Appellate Division and the Judgment entered thereon to the Court of Appeals of the State of New York and said Court of Appeals having rendered its decision whereby it reversed said Order of the Appellate Division and affirmed the Judgment entered on the 23rd day of July 1910, with costs in both Courts and said decision of the Court of Appeals having been made the Judgment of this Court by the Order thereof bearing date and entered on the 30th day of December 1912. Now on reading and filing said last mentioned Order it is hereby

285 Ordered and adjudged that said Order of the Appellate Division of this Court bearing date the 19th day of May 1911, and Judgment entered thereon on the 24th day of May 1911. be and the same are hereby reversed and the Judgment of this Court above mentioned entered on the 23rd day of July 1910 be and the same is hereby affirmed. And it is

Further ordered that the plaintiff and appellant Samuel Green recover of and from the defendants and respondents Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, the sum of Four hundred fifty nine and 32/100 Dollars costs and disbursements taxed by the Clerk of this Court costs of the appeal above mentioned.

CHARLES S. DEVOY, *Clerk.*

O. K.
T. F. S.

12–30–1912.

286 [Endorsed:] N. Y. Supreme Court. Samuel Green, Appellant, vs. Supreme Council of the Royal Arcanum &c. Judgment. F. J. Moissen, Att'y for Appl't, 561 73rd St., Brooklyn, N. Y. Filed Dec. 30 1912.

287 In the Supreme Court of the United States.

SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Plaintiffs in Error,

v.

SAMUEL GREEN, Defendant in Error.

Petition for Writ of Error.

To the Supreme Court of the United States:

The Petition of the Supreme Council of the Royal Arcanum, and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, the plaintiffs in error, and defendants below, by Howard C. Wiggins, their attorney, respectfully shows:

First. The plaintiff in error, Supreme Council of the Royal Arcanum was, and still is a fraternal beneficiary corporation, duly organized and existing under the laws of Massachusetts, and is a citizen of that state, carrying on its business in accordance with the statutory law of Massachusetts, but with numerous "Subordinate Councils" or branches organized by it in the State of New York and in the various states of the United States and in the Provinces of Canada.

That one of the objects of the plaintiff in error, the said Supreme Council of the Royal Arcanum, is to establish a Widows' and Orphans' Benefit Fund from which, upon satisfactory evidence of the death of a member of the Order, who has complied with all of its lawful requirements, a sum not exceeding Three Thou-
288 sand Dollars ($3,000.00) shall be paid to his family or those dependent upon him.

That at the time of the trial of the above entitled action in the court below, the plaintiff in error had a membership of about two hundred and forty five thousand (245,000), with outstanding benefit certificates amounting in the aggregate to about five hundred million dollars ($500,000,000.00).

Second. That the defendant in error, and the plaintiff below, Samuel Green, became a member of the Royal Arcanum by joining "De Witt Clinton Council No. 419" one of the Subordinate Councils or branches of said plaintiff in error, in May, 1883, being then thirty seven (37) years of age. Under the by-laws then in force, each member of that age was required to pay to the Widows' and Orphans' Benefit Fund the sum of one dollar and eighty cents ($1.80) upon each assessment, assessments being called at irregular intervals, as needed to meet the current mortuary liabilities.

Third. That in 1898, the by-laws of the said Supreme Council of the Royal Arcanum were amended so as to require each member of the age of thirty-seven (37) years at the time of admission, to pay once in each calendar month an assessment of the amount of three dollars and sixteen cents ($3.16) with provision for extra assessments, if required.

Fourth. That in 1905, said Supreme Council of the Royal Arcanum amended its by-laws governing its assessment rates, increasing the assessment of the defendant in error, and of all other members of the corporation of like age, from three dollars and sixteen cents ($3.16) to six dollars and eighty seven cents ($6.87).

Said amendments were duly adopted by more than a three fourths majority in strict compliance with the by-laws of said plaintiff in error, and the rates so adopted actually represent the actual
289 cost of the benefits promised to members of each age, and equitably apportion the cost of protection among the members of the plaintiff in error according to age and risk.

Fifth. That on February 19th, 1910, the defendant in error commenced an action against the said plaintiffs in error, in the Supreme Court of the State of New York, praying for an injunction permanently enjoining and restraining the plaintiffs in error from suspending the defendant in error as a member of the Royal Arcanum,

upon the payment by him of the sum of three dollars and sixteen cents ($3.16) upon each assessment.

Sixth. That on March 17th, 1910, the plaintiffs in error in said action interposed an answer as a defense thereto, and on April 16th, 1910, the said plaintiffs in error served an amended answer, alleging that the contract between the defendant in error and the plaintiff in error was one of corporate membership; that said contract consisted of the application for membership, the membership or benefit certificate, the corporate by-laws and the corporate charter and statutes of the Commonwealth of Massachusetts, and further said amended answer alleged that it was and is provided in and by the Revised Statutes of the Commonwealth of Massachusetts, Chapter 119, Section 2, that fraternal beneficiary associations, of which the plaintiff in error, the Supreme Council of the Royal Arcanum, is one, may revise, alter and amend their rates of assessment, and tables thereof, and that the Public Acts of the Commonwealth of Massachusetts authorize the changes complained of, and that the defendant in error was bound thereby.

Seventh. Said amended answer also alleged that on or about December 2nd, 1905, one Stephen Reynolds, a member of the plaintiff in error corporation, and fifteen other members thereof,
290 who joined the said corporation under the same terms and conditions as the defendant in error, filed a bill in equity, in the Supreme Judicial Court of Massachusetts, the highest court of that state, and the court having jurisdiction of the subject matter of said action, in behalf of themselves and all other members of said corporation, including the defendant in error, as a class action or "shareholders' bill," to enjoin the corporation from the collection of the said rates of assessment as amended in 1905, as aforesaid, in which said proceeding the facts in issue were identical with those set forth in the complaint of the defendant in error, and the plaintiff below, and the said amended answer also alleged that on May 17, 1906, the said Supreme Judicial Court of Massachusetts unanimously found and determined that the facts and changes of rates of which the defendant in error complained in his said action, were fully authorized by the laws of Massachusetts, by the constitution and by-laws of said corporation, and by the contracts between the parties in said action, and the said Supreme Council of the Royal Arcanum, and were not in violation of the rights of any of the members of said corporation, and the bill was dismissed; and the said amended answer further alleged that the rights of the defendant in error as a member of said corporation were and are concluded and determined by the aforesaid judgment of the Supreme Judicial Court of Massachusetts, and said judgment is binding upon the defendant in error as a party thereto, and that under the Constitution of the United States the said judgment was and is entitled to full faith and credit in the State of New York, and that therefore the complaint of the defendant in error should be dismissed.

Eighth. That said action came to trial in the said Supreme Court in Kings County, on the 15th day of June, 1910, before the Hon. William J. Kelly, Justice, and on July 23rd, 1910, the decision of

the trial court was rendered in favor of the defendant in
291 error, enjoining the plaintiffs in error from suspending the defendant in error from membership in said corporation, upon the payment by him of three dollars and sixteen cents ($3.16) for each assessment once in each calendar month, until his decease. Accordingly, on July 23rd, 1910, judgment was entered in the office of the Clerk of the County of Kings to the effect that upon the defendant in error paying the sum of three dollars and sixteen cents ($3.16), once in each calendar month until his decease, the plaintiffs in error were enjoined and restrained from suspending the said defendant in error as a member of said corporation, and judgment was directed for one hundred twenty nine dollars and thirty cents ($129.30) costs against the plaintiff in error.

On or about August 4th, 1910, an appeal was taken from said judgment to the Appellate Division of the Supreme Court for the Second Department in the State of New York, and on May 19th, 1911, the said judgment was reversed upon questions of fact and of law, and a new trial granted, with costs to abide the final award of costs, and judgment of reversal was entered in the Kings County Clerk's Office on May 24th, 1911.

From the said judgment of reversal and on or about June 13th, 1911, the said defendant in error appealed to the Court of Appeals of the State of New York, the same being the highest court in said state in which a decision in said suit could be had, and on December 10, 1912, the said Court of Appeals rendered a decision reversing the order of the Appellate Division, and directing the affirmance of the judgment of the Special Term, entered in the Kings County Clerk's Office as aforesaid, on July 23rd, 1910, with costs to the defendant in error in all of the courts.

That on or about the 11th day of December, 1912, the said Court of Appeals made a judgment and decree in said suit, direct-
292 ing that the order of the Appellate Division be reversed and that the judgment of the Special Term be affirmed, and that the record be removed to the Supreme Court of the State of New York to be enforced according to law. That the said record was thereupon removed accordingly, and was filed in the office of the Clerk of the Supreme Court in and for the County of Kings, on the 30th day of December, 1912; whereupon the said Supreme Court in obedience to the order and judgment of the Court of Appeals, and in accordance with the law and practice of the State of New York, gave final judgment in said suit or action, adjudging that the judgment of the Court of Appeals be made the judgment of the Supreme Court, and that the orders of the Appellate Division of said Supreme Court bearing date May 19, 1911, and the judgment entered thereon on the 24th day of May, 1911, be reversed and the judgment of the Special Term of said Supreme Court entered on July 23, 1910, be affirmed, and that the said judgment so entered was in the highest court in said State in which a judgment in said suit could be had.

Upon the trial of said action at Special Term and before the Appellate Division of the Supreme Court and before the said Court of Appeals, your petitioners duly argued, contended and insisted

that the statutes of the Commonwealth of Massachusetts gave to the plaintiff in error corporation the right and power to alter, revise and amend the assessment rates of the members of the said corporation, and said trial court found as a fact—

"That by the statutory law or Public Acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant, Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment."

And your petitioners aver that the trial court having found as a fact that the amendments in the corporate by-laws represented the actual cost to the Order for the benefits promised to members at each age, and equitably apportioned the cost of protection among the members of the Order, and having also found as a fact that the Public Acts of Massachusetts conferred the power to make said amendments, could not lawfully enter the judgment above
293 set forth, and that by the entry of said judgment, said trial court failed and refused to give faith and credit to the public acts and to the Massachusetts statutes, contrary to and in violation of Section 1 of Article IV of the Constitution of the United States, and of the Act of Congress passed pursuant thereto.

That upon the trial of said action and before the Appellate Division and the said Court of Appeals, your petitioners duly argued and asked that the said complaint of the defendant in error should be dismissed upon the ground that under the contract entered into between the plaintiff in error, Supreme Council of the Royal Arcanum, and the defendant in error, the said plaintiff in error, Supreme Council of the Royal Arcanum had the power to make the changes complained of, and that said amended by-laws were valid and binding upon the defendant in error. The motions made by the plaintiff in error for a dismissal of the complaint upon the ground stated, among others, were overruled by the trial court, and by the said Court of Appeals, and your petitioners duly excepted to said ruling of the trial court.

Your petitioners further aver that the decisions and judgments of the said trial court and of the said Court of Appeals constituted a failure to give full faith and credit to the Public Acts of Massachusetts, and therein offended against the provisions of Section 1 of Article IV of the Constitution of the United States, and the Act of Congress passed pursuant thereto.

Ninth. That upon the trial of said action your petitioners offered in evidence, duly certified and authenticated in accordance with the Act of Congress prescribing the manner of proving judicial proceedings, the record of the case of Reynolds, and others, against the plaintiff in error corporation, in the Supreme Judicial Court
294 of Massachusetts, as hereinbefore set forth, to which proceeding defendant in error was a party, which said record was excluded by the trial court, over the objection and exception of your petitioners, and the trial court thereby refused to give full faith and credit to the judicial proceedings of another state, as required by Section 1 of Article IV of the Constitution of the United States, and the Act of Congress passed pursuant thereto.

That the defendant in error was a member of the said corporation of the Royal Arcanum, the plaintiff in error, at the time the Reynolds case was brought and judgment therein rendered. The facts in that case were identical with the facts in the case brought in the Supreme Court of the State of New York, by the defendant in error. The Reynolds suit was brought in 1905 by sixteen members of said corporation in behalf of themselves and all other members of the corporation who should join with them to enjoin and restrain the said corporation from enforcing the rates complained of by the defendant in error, and that a full hearing was had and final judgment was given by the said Supreme Judicial Court of Massachusetts, the highest court in said state in which a decision in said suit could be had, wherein and whereby the changes in assessment rates complained of by the defendant in error were held to be valid and binding upon all of the members of said corporation, including the defendant in error, and your petitioners aver that they had a strict constitutional right to have the judgment in the Reynolds case respected by the tribunals of New York State, as a binding judgment in favor of the corporation and its privies in interest, and a conclusive bar to the maintenance of said action by the defendant in error, and that said judgment was entitled
295 to full faith and credit in all of the courts, under Section 1 of Article IV of the Constitution of the United States, and the Act of Congress passed pursuant thereto.

Your petitioners further aver that they duly objected and excepted to the rejection of said record, and that the exclusion thereof was prejudicial error; that before the said Court of Appeals, your petitioners duly argued and contended that the rejection of said record in the Reynolds case was a denial of a right guaranteed to your petitioners under Section 1 of Article IV of the Constitution of the United States, and the Act of Congress passed pursuant thereto.

Tenth. That the said decisions and judgments of said courts and judges and each of them denied to your petitioners a title, right, privilege and immunity held by your petitioners under the Constitution and Statutes of the United States, to the great prejudice of your petitioners, all of which will in more detail appear by the record and assignment of errors herein.

Wherefore your petitioners pray for a writ of error directed to the Supreme Court of the State of New York, commanding that court to send the record of the proceedings in said suit or action aforesaid, and all things concerning the same, duly authenticated, to the Justices of the Supreme Court of the United States, and for the usual citation to the end that the record of the proceedings being inspected, the said Justices of the Supreme Court of the United States may cause further to be done therein to correct all error, what by right and according to the law and Constitution of the United States ought to be done; that said writ of error
296 operate as a supersedeas, that the amount of security which the petitioners shall give and furnish on said writ of error may be fixed, and that upon the giving of such security all further proceedings in said Court be suspended and stayed until the deter-

mination of said writ of error by the Supreme Court of the United States.

And your petitioners will ever pray.

Dated January 7th, 1913.

[Seal Supreme Council of the Royal Arcanum.]

SUPREME COUNCIL OF THE ROYAL ARCANUM,
By ALFRED T. TURNER,
Supreme Secretary.
VAL M. SCHMITZ,
Formerly Regent of De Witt Clinton Council No. 419 of the Royal Arcanum.

HOWARD C. WIGGINS,
Attorney for Plaintiffs in Error.

103 W. Dominick Street, Rome, Oneida County, N. Y.

297 COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

Alfred T. Turner, being duly sworn, deposes and says that he is the Supreme Secretary of the Supreme Council of the Royal Arcanum, one of the plaintiffs in error in the above entitled action; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon his information and belief, and as to those matters he believes it to be true; that the reason why this verification is not made by the plaintiff in error, the Supreme Council of the Royal Arcanum, is because it is a corporation; that the grounds of deponent's belief as to all of the matters in said petition not stated upon his knowledge are investigations which deponent has caused to be made concerning the subject matter of this petition, and information acquired by deponent in the course of his duties as such officer of the corporation, the said plaintiff in error in this action, and that deponent is duly authorized to make this verification by Section 44*a* of the by-laws of the said corporation, the plaintiff in error.

ALFRED T. TURNER.

Subscribed and sworn to before me, this 7th day of January, 1913.

[Seal Curtis H. Waterman, Notary Public, for the Commonwealth of Massachusetts, U. S. A.]

CURTIS H. WATERMAN,
Notary Public.

The writ of error, as prayed for in the foregoing petition, is hereby allowed, and bond is fixed in the sum of $5,000.00. Dated January 8, 1913.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

298 [Endorsed:] E. 1910. No. 3120. 102/385. Supreme Court of the United States. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, Plaintiffs in Error, v. Samuel Green, Defendant in Error. Original. Petition for Writ of Errors. Filed January 10, 1913. Howard C. Wiggins, Attorney for Plaintiffs in Error, 103 W. Dominick St., Rome, Oneida Co., N. Y.

299 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court on a remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Samuel Green, plaintiff, and Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity;

300 or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 8th day of January, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by:
CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

301 [Endorsed:] E. 1910. No. 3120. Supreme Court of the United States. 102/476. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, Plaintiffs in Error, vs. Samuel Green, Defendant in Error. Original Writ of Error. Howard C. Wiggins, Attorney for Plaintiffs in Error, 103 W. Dominick St., Rome, Oneida Co., N. Y. Filed January 10, 1913.

302 UNITED STATES OF AMERICA, *ss:*

To Samuel Green, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of New York, wherein Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles E. Hughes, Associate Justice of the Supreme Court of the United States, this 8th day of January, in the year of our Lord one thousand nine hundred and thirteen.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

303 [Endorsed:] E. 102/476. Supreme Court of the United States. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, Plaintiffs in Error, vs. Samuel Green, Defendant in Error. Original Citation. Howard C. Wiggins, Attorney for Plaintiff in Error, 103 W. Dominick St., Rome, Oneida Co., N. Y. Personal service of the within citation is hereby admitted this 10th day of January 1913. F. J. Moissen, Att'y for Def't in Error. Filed January 10, 1913. 1910. No. 3120.

304 Supreme Court of the United States.

SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Plaintiffs in Error,

vs.

SAMUEL GREEN, Defendant in Error.

Assignment of Errors.

Now come the Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal

Arcanum, the above named plaintiffs in error, by Howard C. Wiggins, their attorney, and in connection with the writ of error filed herewith, say:

That in the record, proceedings, decision and final judgment of the Court of Appeals of the State of New York and of the Supreme Court of the State of New York aforesaid, in the said suit or action, there is manifest error in this, to wit:

1. Said Courts erred in holding by this affirmance of the judgment of the trial court in disregard of the Federal Constitution and the Statutes aforesaid that an assessment upon the members of a Massachusetts corporation duly levied upon them in respect to their membership in such corporation, by virtue of the Public Acts of Massachusetts ratified and affirmed by the highest Court of Massachusetts, the State of the domicile of the corporation, is not binding upon a member of the corporation residing in the State of New York.

2. Said Courts having found as a fact that under the Public Acts of Massachusetts the plaintiff in error corporation had the power to adopt the amendments in question, erred by their failure and refusal to give full faith and credit to said Public Acts of Massachu-
305 setts as required by Art. IV, Section 1 of the United States Constitution and the Statutes of the United States enacted pursuant thereto.

3. The said Courts erred in ordering and adjudging that the Order of the Appellate Division of the Supreme Court appealed from in said action be reversed and that the judgment of the Special Term in said action be affirmed, because the said judgment of the Special Term was made and rendered in disregard of the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereof.

4. The said Courts erred in holding and deciding that the judgment of July 23, 1910, in the above-entitled action should be affirmed, and that the defendant in error, Samuel Green, should have costs against the plaintiffs in error in the sum of Four Hundred Fifty-nine Dollars and Thirty-two Cents ($459.32), because said judgments were rendered in disregard of the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereof.

5. The said Courts erred in holding by the reversal of the order of the Appellate Division and the affirmance of the said judgment entered on July 23rd, 1910, that the trial court gave full faith and credit as required by the Constitution and Statutes aforesaid to the Public Acts of Massachusetts, as proved in the case.

6. The said Courts erred in holding by the affirmance of said judgment entered July 23rd, 1910, that the refusal by the trial court to receive in evidence a duly certified and authenticated copy of a judgment roll in an action in the Supreme Judicial Court of Massachusetts, wherein the plaintiff in error corporation was defendant and one Stephen Reynolds and certain other parties in privity with and acting as the representatives of the defendant in error were plaintiffs, wherein a decree was entered in favor of the plaintiffs in error and binding upon the defendant in error in regard to the matters and

things involved in the present proceeding then before said trial court, did not violate the provisions of Article IV, Section 1, of the
306 Federal Constitution, and the Act of Congress pursuant thereto, prescribing that such judgment roll, authenticated as aforesaid should have such faith and credit given to it in every court within the United States as it would have by law or usage in the Court of the State from which it was taken.

7. The said Courts erred in failing to affirm the order of the Appellate Division reversing the judgment of the trial court, because said judgment was based upon the refusal of said trial court to receive in evidence the above described judgment of the courts of Massachusetts, certified and proved as required by the Act of Congress in regard to the proof of judicial acts and proceedings, and a refusal to give such judgment the faith and credit in the courts of New York to which said judgment would be entitled by law and usage in the courts of the State of Massachusetts in which it was rendered as said trial court was required to do by the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereto.

8. The said Courts erred in holding, by the affirmance of the said judgment of the trial court, entered on July 23rd, 1910, that the Supreme Court of the State of New York gave full faith and credit to the judgment of the Supreme Judicial Court of the State of Massachusetts in the case of Reynolds vs. Supreme Council of the Royal Arcanum, as pleaded and offered to be proved in the case, as it was required to do by the Constitution of the United States, and the Statutes of the United States as aforesaid.

9. The said Courts erred in not holding and deciding that the judgment and opinion aforesaid, in said Reynolds case was a conclusive assertion of the validity of the amendments here in question to the by-laws of the plaintiff in error corporation, so far as the defendant in error Green was concerned, and that full faith and credit as required as aforesaid, should be given to said judgment in the courts of New York.

307 10. The said Courts erred in failing to give, as required by the Federal Constitution and Statutes aforesaid, the judgment and opinion in the Reynolds case the same effect in the Courts of New York as it would have had or had in the Courts of Massachusetts, the domicile of the corporation.

11. The said Courts erred in not holding that the defendant in error, Samuel Green, a member of the plaintiff in error corporation, was bound in his relations with that corporation by the judgment in its favor in said Reynolds case, by a court of competent jurisdiction, and having jurisdiction of the parties to and subject matter of the present case, which judgment was duly pleaded and offered in evidence in this action.

12. The said Courts erred in sustaining and affirming by the decision and judgments aforesaid the refusal of the trial court to apply to the case the laws of Massachusetts, the domicile of the plaintiff in error corporation as proved in the case, for the purpose of determining the corporate power of said corporation and the rights and lia-

bilities under the contract of membership in it mentioned in the pleadings, as required by the Federal Constitution and the Statutes aforesaid.

13. That by the record aforesaid it appears that the aforesaid judgment was given by the Court of Appeals of the State of New York against the defendants below and the plaintiffs in error, in favor of the plaintiff below and defendant in error, whereas by the law of the land and Constitution of the United States, and the Acts of Congress passed pursuant thereto, the said judgment should have been given for the defendants below and plaintiffs in error, and against the plaintiff below and defendant in error.

All of said errors will appear fully and at large in the record in the case of Samuel Green vs. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, in said Supreme Court of the State of New York, which will be duly certified to the Supreme Court of
308 the United States, and to which reference is hereby made for the detailed statement of the errors aforesaid.

The assertion of a right, privilege or immunity under the United States Constitution by the plaintiffs in error was distinctly urged upon the trial of the cause in the Supreme Court of the State of New York, before the Appellate Division of the said court, and before the said Court of Appeals, as follows:

In and by the Second, Third and Sixth separate defenses contained in the amended answer of the defendants below, and in and by the Seventh Conclusion of Law submitted to the Justice before whom the cause was tried, proposed by the plaintiffs in error, refused by said justice, and duly excepted to.

In and by the Fifth and Sixth Points of the printed argument of the plaintiffs in error, submitted to the said Appellate Division of the Supreme Court.

In and by the Fifth and Seventh Points of the printed argument of the said plaintiffs in error submitted to the said Court of Appeals of the State of New York.

Wherefore, the Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, your petitioners, the defendants below and plaintiffs in error, pray that the said judgment of the Court of Appeals of the State of New York, and the judgment of the Supreme Court of the State of New York, as aforesaid, be reversed and annulled, and altogether held for nothing, and that your petitioners be restored to all things which *it has* lost by the action of said judgments, etc., and that *it* may have such other and further relief, according to law, as to your Court may seem just and proper.

Dated January 7th, 1913.

HOWARD C. WIGGINS,
Attorney for Plaintiffs in Error.

Office and Post Office Address, 103 W. Dominich Street, Rome, Oneida County, N. Y.

309 [Endorsed:] E. 102/476. Supreme Court of the United States. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, Plaintiffs in Error, vs. Samuel Green, Defendant in Error. (Original.) Assignment of Errors. Howard C. Wiggins, Attorney for Plaintiffs in Error, 103 W. Dominick Street, Rome, Oneida Co., N. Y. Filed January 10, 1913. 1910. No. 3120.

310 In the Supreme Court of the United States.

Bond on Writ of Error.

Know all men by these presents that we the Supreme Council of the Royal Arcanum, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and Val M. Schmitz, formerly Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, as principals, and The American Surety Company of New York, having an office and principal place of business at No. 100 Broadway, in the City of New York, in the State of New York, as surety, are held and firmly bound unto Samuel Green, of the Borough of Brooklyn, in the State of New York, in the full and just sum of Five Thousand Dollars ($5,000.00) to be paid to the said Samuel Green, his heirs, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, our, and each of our successors and assigns, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 2nd day of January, in the year of our Lord nineteen hundred and thirteen.

Whereas, lately in the Supreme Court of the State of New York, in a suit pending in said court between Samuel Green, plaintiff-appellant, and the Supreme Council of the Royal Arcanum, and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, defendants-respondents, a judgment was rendered on a remittitur from the Court of Appeals of the State of New York, against the said Supreme Council of the Royal Arcanum, and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, defendants-respondents, in favor of the said Samuel Green, plaintiff-appellant, and the said defendants-respond-
311 ents having obtained from a Justice of the Supreme Court of the United States, a writ of error, and filed a copy thereof in the Clerk's office of the Supreme Court of the State of New York, to reverse the said judgment in the aforesaid suit, and a citation directed to the said Samuel Green, citing and admonishing him to be and appear at the said Supreme Court of the United States, to be holden at the City of Washington, District of Columbia, within thirty (30) days from the date thereof,

Now, the condition of the above obligation is such, that if the said Supreme Council of the Royal Arcanum, and Val M. Schmitz, Regent of De Witt Clinton Council No. 419, of the Royal Arcanum shall prosecute said writ of error to effect and answer all damages

and costs, if it fails to make its plea good, then the above obligation to be void, otherwise to remain in full force and effect.

[Seal of the Supreme Council of the Royal Arcanum.]

SUPREME COUNCIL OF THE ROYAL ARCANUM,
By ALFRED T. TURNER,
Supreme Secretary.

VAL M. SCHMITZ,
Formerly Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum.

AMERICAN SURETY COMPANY OF NEW YORK,
By LIEBER E. WHITTIC,
Resident Vice-President.

Attest:

[Seal of the American Surety Company of New York.]

A. BRADLEY FULLER,
Resident Assistant Secretary.

312 COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

On this 7th day of January, 1913, before me personally came Alfred T. Turner, to me known, and being by me duly sworn did depose and say that he resided in Brookline, in the Commonwealth of Massachusetts; that he is the Supreme Secretary of the Supreme Council of the Royal Arcanum, one of the corporations described in and which executed the above instrument, and that he knew the seal of the said corporation; that the seal affixed to said instrument was such corporate seal and that it was so affixed by virtue of the authority of Section 44*a* of the Constitution of the said Supreme Council of the Royal Arcanum, and that he signed his name thereto by like authority.

ALFRED T. TURNER.

Subscribed and sworn to before me this 7th day of January, 1913.
[NOTARIAL SEAL.] CURTIS H. WATERMAN,
Notary Public.

313 STATE OF NEW YORK,
County of New York, ss:

On this 7th day of January, 1913, before me, the subscriber, personally appeared the above named Val M. Schmitz to me known and known to me to be one of the persons described in and who executed the foregoing instrument, and he to me duly acknowledged that he executed the same and the said Val M. Schmitz, being by me duly sworn did depose and say that at the time of the commencement of the said action in the Supreme Court of the State of New

York, brought by Samuel Green against the Supreme Council of the Royal Arcanum and himself, that he was then the acting Regent of De Witt Clinton Council No. 419 of the Royal Arcanum.

VAL M. SCHMITZ.

Subscribed and sworn to before me, this 7th day of January, 1913.

[NOTARIAL SEAL.] URIAH W. TOMPKINS,
Notary Public (52), *New York County.*

314 Copy.

STATE OF NEW YORK,
County of Onondaga, City of Syracuse, N. Y., ss:

On this 2d day of January 1913, before me personally appeared Lieber E. Whittic Resident Vice President of the American Surety Company of New York, with whom I am personally acquainted, who being by me duly sworn said: That he resided in the City of Syracuse, N. Y. *N. Y.;* that he is the Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the within instrument; that he knew the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the Board of Trustees of said Company; that he signed said instrument as Resident Vice President of said Company by like authority, and that the liabilities of the American Surety Company of New York do not exceed the assets as ascertained in the manner provided by law. And the said Lieber E. Whittic further said that he was acquainted with A. Bradley Fuller and knew him to be the Resident Assistant Secretary of said Company; that the signature of said A. Bradley Fuller was thereto subscribed by like order of the said Board of Trustees and in the presence of him the said Resident Vice President.

[SEAL.] GRACE E. DE WITT,
Notary Public, Onondaga County.

315 Copy.

STATE OF NEW YORK,
County of New York, ss:

A. L. Adams being duly sworn, says: that he is an Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said Company, and is duly qualified to act as surety under such laws. That said Company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that

the within is a true copy of the last statement of the assets and liabilities of said Company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than $6,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

A. L. ADAMS.

Subscribed and sworn before me this 10th day of Oct., 1912.
E. A. FARRELL,
Notary Public, New York County, No. 7.

Register's Office, New York County No. 3002.
Certificate filed in all Counties.

Copy.

316 American Surety Company of New York,
Incorporated April 14, 1884.

General Offices, 100 Broadway.
Company's Office Building, 100 Broadway, New York.

Financial Statement, September 30, 1912.

Resources.

Real Estate:		
Home Office Building and Land, unencumbered	$3,000,000.00	
N. Y. City Water Front, unencumbered	166,047.91	
		$3,166,047.91
Stocks and Bonds, Market Value		4,105,077.50
Guaranteed Mortgages, and Collateral Loans		206,276.36
Cash in Banks and Offices		839,707.28
Premiums in Course of Collection		503,699.85
Accrued Interest and Rents		59,524.08
		$8,880,332.98

Liabilities.

Capital Stock	$2,500,000.00
Surplus	3,953,660.95
Reserve for Re-Insurance	1,547,939.10
Reserve for Contingent Claims	751,224.10
Reserve for Contingent Expenses	75,000.00
Bills and Accounts Payable, not due	52,508.83
	$8,880,332.98

317 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

Copy.

The first quarterly meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Wednesday, January 17, 1912, at 12 o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The Committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 12, 1911, for the purpose of nominating officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for

Place.	Resident Vice Presidents.	Resident Assistant Secretaries.
Syracuse, N. Y.	Fred'k W. Barker. Charles W. Andrews. Lieber E. Whittic. John W. Hogan. A. Bradley Fuller.	Lieber E. Whittic. A. Bradley Fuller. Wilfred W. Porter, Jr.

Copy.

* * * * * * *

"Whereupon, it was

"Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

* * * * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * * * *

Copy.

STATE OF NEW YORK,
County of New York, ss:

I, F. J. Parry, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 19th day of January, 1912.

[SEAL.] F. J. PARRY,
Assistant Secretary.

318 The within bond and surety are hereby approved this 8th day of January, 1913.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

319 United States Supreme Court.

SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Plaintiffs in Error,

v.

SAMUEL GREEN, Defendant in Error.

Please take notice that the within is a copy of an undertaking duly approved by the Honorable Charles E. Hughes, Associate Justice of the Supreme Court of the United States, on the 8th day of January, 1913, and this day entered and filed in the above entitled action in the office of the Clerk of the Supreme Court of the State of New York in and for the County of Kings, in the Borough of Brooklyn and State of New York.

Dated January 10th, 1913.

Yours, etc.

HOWARD C. WIGGINS,
Attorney for Plaintiffs in Error.

103 W. Dominick St., Rome, Oneida Co., N. Y.

To F. J. Moissen, Attorney for Defendant in Error.

320 [Endorsed:] Supreme Court of the United States. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum,

Plaintiffs in Error, v. Samuel Green, Defendant in Error. (Copy.) Bond on Writ of Error. Howard C. Wiggins, Attorney for Plaintiffs in Error, 103 W. Dominick Street, Rome, N. Y.

321 STATE OF NEW YORK,
County of Kings, ss:

Clerk's Office of the Supreme Court of the State of New York, for the County.

I, Charles S. Devoy, Clerk of the County of Kings, and of the Supreme Court of the State of New York for the said County of Kings, by virtue of the annexed writ of error, which was served upon me on the 10th day of January, 1913, and in obedience thereto, do hereby certify that the foregoing pages, numbered from 1*a* to 286, inclusive, contain a true and complete transcript of the record, and proceedings had in said Court, in the suit of Samuel Green, plaintiff, vs. Supreme Council of the Royal Arcanum, and Val M. Schmitz, Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, defendants, mentioned in said Writ of Error, as the same remain of record and on file in my office, and that annexed hereto is the petition for the said writ of error, the assignment of errors, the citation to the writ of error, with proof of service thereof, copy of original bond filed in my office, and said writ of error served upon me.

In testimony whereof I have caused the seal of said court to be hereunto annexed at my office in the Borough of Brooklyn, County of Kings, on the 16th day of January, 1913.

[Seal Kings County.]

CHAS. S. DEVOY, *Clerk.*

322 Supreme Court, Appellate Division, Second Judicial Department.

SAMUEL GREEN, Respondent,
against
SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent, etc., Appellants.

Jenks, P. J.; Hirschberg, Burr, Carr, and Woodward, JJ.

Appeal by the Defendants from a Judgment of the Special Term, Entered in the Office of the Clerk of the County of Kings, on the 23rd Day of July, 1910, in Favor of the Plaintiff.

Howard C. Wiggins (Curtis H. Waterman with him on the brief), for the appellants.

F. J. Moissen, for the respondent.

BURR, *J.:*

This action involves the validity of an amendment to defendant's by-laws made in 1905. In the case of Mock v. Supreme Coun-

cil, etc., (121 App. Div. 474), the validity of this amendment was considered by this court and sustained. We are controlled by such decision, unless, as is claimed by plaintiff, subsequent decisions of the Court of Appeals in similar cases are in conflict therewith. The cases so relied upon are Wright v. Knights of Maccabees, (196 N. Y. 391) and Dowdall v. Catholic Mutual Benefit Ass'n (Idem, 405). The Dowdall case may be dismissed without further consideration as wholly inapplicable to the questions here involved. There was in that case no suggestion of even a general reservation of power to amend by-laws, rules or requirements.

Whatever the rule may be in other jurisdictions, we think it must now be deemed to be the settled law of this state that when the contract entered into between a member of a fraternal beneficiary
323 organization and such organization provides for the payment of a fixed sum upon the happening of some event, such as the death of the member, and that assessments shall be at a fixed and specified rate, neither the conditions upon which the sum shall become payable can be altered, nor the sum to be paid be reduced, nor the amount of the specified assessment increased, without the consent of such member, and this rule is not altered by the fact that there may be reserved in such contract a power of amendment of the laws of the association in purely general terms. (Wright v. Knights of Maccabees, supra; Parish v. New York Produce Exchange, 169 N. Y. 34; Langan v. Supreme Council Am. L. of H. 174 N. Y. 266; Shipman v. Protected Home Circle, 174 N. Y. 398; Weber v. Supreme Tent of K. of M., 172 N. Y. 490; Ayers v. Order of United Workmen, 188 N. Y. 280.)

On the other hand, if there is reserved in the contract a power of amendment of the laws governing such association, reasonably designating the subjects thereof, so that a person when he makes application for membership is fairly advised that the terms of the contract in which he is about to enter may be altered in the respects thus referred to, subsequent changes in such laws when reasonably made by the proper authorities of the organization are within their power, and must be deemed assented to by him (Beach v. Supreme Tent K. of M., 177 N. Y. 100). In that case the court said:

"If the certificate had provided that the payments therein specified should be subject to such modification as to amount, terms and conditions of payment and contingencies in which the same were payable as the endowment laws of the order might from time to time provide, the amendments would be applicable to existing members."

Although the court there used the word "certificate", we think that it was not intended necessarily to limit the effect of a reservation to the words contained in the certificate alone. In Sabin v. Phinney, (134 N. Y. 423, on page 428) the court say:

"The statute under which the corporation was organized,
324 its by-laws, together with the application for, and the certificate of membership constituted the contract which existed between the member and the society, which instruments construed together measure the rights of these litigants."

In other words, the question is one of construction of the contract,

whether such contract is expressed in the statutes under which the corporation is organized, the constitution and laws existing when application for membership was made, the application for membership, the certificate thereof, or one or more of these combined. The test is, was the reservation of a power to subsequently alter the terms of the contract so clearly and definitely expressed, that the member party to the contract must be deemed to have understood and assented to the same.

With this guiding principle, let us now consider the contract between plaintiff and the defendant organization of which he is a member. Defendant is a Massachusetts corporation. The court at Special Term has found as a fact "That by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment." The Supreme Court of Massachusetts has so construed these statutes (Reynolds v. Royal Arcanum, 192 Mass. 150). Existence of such a power, however, is insufficient if it is not exercised. But in determining the meaning of the contract entered into by plaintiff when he voluntarily became a member of this Massachusetts corporation, the existence of this statutory authority for change and amendment is one fact to be considered. At the time plaintiff applied for membership in defendant corporation, its constitution specified the objects of the order. Among others was one described as follows:

"5th. To establish a Widows' and Orphans' Benefit Fund, from which, on the satisfactory evidence of the death of a member of the order, who has complied with all its lawful requirements, a sum not exceeding three thousand dollars shall be paid to his family or those dependent on him, as he may direct."

The member when making application determined whether he should be classed as a full-rate member and entitled to receive the sum above specified, or a half-rate member and entitled to a lesser amount. The amount of the assessments varied accordingly. Defendant's constitution also contained a provision that the constitutions of subordinate councils and the laws of the Supreme Council "except those relating to the Widows' and Orphans' Benefit Fund", may be altered or amended at any regular meeting of the Supreme Council, but that the constitution of the Supreme Council, and the laws governing the widows' and orphans' benefit fund should not be altered or amended except by a three-fourths vote of the entire membership of the Supreme Council, at a regular meeting, or at a special meeting called for the purpose. Here was a declaration of a purpose to reserve some power of amendment of the laws governing the widows' and orphans' benefit fund under the conditions specified. From the time when plaintiff became a member of defendant organization until the present, the moneys contributed to the widows' and orphans' benefit fund have been used to pay the beneficiaries of deceased members, and for no other purpose whatsoever. Under the constitution and laws of defendant, it could be devoted to no other purpose. This fund was created and maintained by assessments im-

posed upon defendant's members. At the time that plaintiff joined the organization in 1883, the constitution and laws then provided that every person admitted a member of defendant, and being at the time of such admission of the age of thirty-seven years (as plaintiff then was), should pay to the collector of his council the sum of $1.81 upon each and every assessment which should or would be made by said Supreme Council while he was a member of the order, for the purposes and under the provisions of its constitution and laws, and that each and every member so paying such assessment should not only be entitled to all the benefits recited in the constitution and laws, but the person designated by him as his beneficiary should receive upon his decease a sum not exceeding $3,000. Between 1883 and
1898 the number of assessments necessary to maintain said
326 widows and orphans' benefit fund varied from ten to seventeen in different years. This method of maintaining the fund proved unsatisfactory, and in 1898 the constitution and laws of defendant were amended, with plaintiff's consent, so that it was provided that each member of the order should pay to the collector of his council, without notice, twelve regular assessments in each calendar year and in addition to said regular assessments such extra assessments as may from time to time be required and paid as provided in Title VI. It was at that time also provided that every applicant upon presenting himself to receive the degree, and every member who has received the degree, should "pay to the collector the following named amounts for the Widows' and Orphans' Benefit Fund, according to the age attained at the time of receiving the Degree, for full-rate membership; * * * and the same amount of each assessment thereafter, whilst he is a member of the order." Then followed a specification of the amounts to be paid, rated according to age between twenty-one and fifty-five. The amount to be paid by the plaintiff under this provision of defendant's law for each assessment was $3.04. The laws contained a further provision that whenever in the opinion of the Supreme Regent, Supreme Secretary and Supreme Treasurer, the condition of the supreme treasury shall make it necessary to levy extra assessments for the widows' and orphans' benefit fund to meet any requirement thereof exceeding such twelve regular assessments, they should "make written declarations of such opinion * * * which shall be filed with the Supreme Secretary, who shall make record of such filing." The Supreme Secretary was then required at once to notify every council to collect immediately the amount of one assessment from every member upon whom the degree was conferred before the date fixed in such notice, and the collector of such council was required immediately to notify each member to pay the extra assessment according to the terms of the notice from the Supreme Secretary. Plaintiff's application for membership contained these words among others:

"Application for Membership in the Royal Arcanum. * * *
Having become acquainted with the objects of your order, I
327 hereby make application for full rate membership in your council, and do declare, upon my honor as a man, that the statements by me subscribed herein are each and every one of them

true, to the best of my knowledge and belief. * * * I direct that, in case of my decease, all benefit to which I may be entitled from the Royal Arcanum, be paid to Louisa Green related to me as my wife, subject to such future disposal of the benefit, among my dependents, as I may hereafter direct, in compliance with the Laws of the Order. * * * I agree to make punctual payment of all dues and assessments for which I may become liable, and to conform in all respects to the laws, rules and usages of the order now in force, or which may hereafter be adopted by the same."

The benefit certificate received by plaintiff, so far as its contents are here material was in the following form:

"This Certificate is issued to Samuel Green, a member of De Witt Clinton Council No. 419, Royal Arcanum, located at Brooklyn, N. Y., upon evidence received from said Council that he is a contributor to the Widows' and Orphans' Benefit Fund of this Order; and upon condition that the statements made by him in his application for membership in the said Council, * * * be made a part of this contract, and upon condition that the said member complies, in the future, with the laws, rules and regulations now governing the said Council and Fund, or that may hereafter be enacted by the Supreme Council to govern said Council and Fund. These conditions being complied with, the Supreme Council of the Royal Arcanum hereby promises and binds itself to pay out of its Widows' and Orphans' Benefit Fund, to Louisa Green (wife) a sum not exceeding Three Thousand Dollars. In accordance with and under the provisions of the laws governing said Fund, upon satisfactory evidence of the death of said member, and upon the surrender of this certificate; provided that said member is in good standing in this Order at the time of his death."

328 In 1905 another change was made in the methods of assessment for the maintenance of the widows' and orphans' benefit fund. In consequence of this the monthly assessment rate of plaintiff was changed from $3.16 a month to $6.87 a month, which amount is subject to be still further increased if he shall attain the age of 65 years, and still be a member of the order. This change was made after careful deliberation, and the court has found upon abundance evidence that these rates so adopted actually represent the actual cost to the order for the benefits promised to members of each age and equitably apportion among the defendant's members their contributions to the widows' and orphans' benefit fund, taking into consideration age and risk. It is the validity of this last attempted change which is here challenged.

Construing, then, the provision in the certificate requiring plaintiff to comply "with the laws, rules and regulations * * * that may hereafter be enacted by the Supreme Council to govern said * * * fund" in connection with the provisions of the Massachusetts statute and the constitution and laws of the defendant which were in force when plaintiff became a member of the organization in 1883, as modified with his consent in 1898, can it be said that it was part of the contract between the parties that the payments at that time specified to be made 'should be subject to such

modification as to amount, terms and conditions of payment * * * as the endowment laws of the order might from time to time provide?" We think that it was. The certificate expressly reserved the right to make laws, rules and regulations relating to the widows' and orphans' benefit fund, and plaintiff assented to such reservation. Aside from mere matters of administration, the rules and regulations respecting this fund related to just two things, first, the amount to be paid to the beneficiary out of said fund, and second, the amount to be contributed to and paid into such fund by the members of the organization in order to make such payments possible. Unless this specific reservation of power to change the laws governing said fund related to possible changes, either in the sums to be paid to the beneficiary or the amount of the
329 assessment necessary to make such payment possible, it is difficult to understand to what it was intended to refer (Supreme Ruler, etc., v. Ericksen, [Court of Civil Appeals of Texas], 131 Southwestern Rep. 101). That it must refer to these essential provisions relative to the widows' and orphans' benefit fund seems a necessary conclusion from the fact that there was a specific reservation of power to amend. Mere details of the administration of the affairs of defendant, including details respecting the administration of this fund, could have been changed under a general reservation of power. (Ayers v. Ancient Order of United Workmen, etc., 188 N. Y. 280; Parish v. N. Y. Produce Exchange, 169 N. Y. 51.) By this specific reservation of power something more must have been intended. In this respect the case at bar differs from and we think is distinguishable from Wright v. Knights of Maccabees (196 N. Y. 391), relied upon in the court below and hereinbefore referred to. In that case the application for membership contained these words:

"I hereby agree that * * * the laws of the Supreme Tent of the Knights of the Maccabees of the World, now in force or that hereafter may be adopted, shall form the basis of this contract for beneficial membership * * * this application and the laws of the Supreme Tent now in force, or that may hereafter be adopted, are made a part of the contract between myself and the Supreme Tent; and I, for myself, and my beneficiary or beneficiaries, agree to conform to and be governed thereby."

The certificate of membership contained these words: "At his (Wright's) "death one assessment on the membership, not exceeding in amount the sum of $1,000, will be paid as a benefit to Mary Wright * * * provided he shall have in every particular complied with the laws of the Order in force or that may hereafter be adopted."

When Wright was admitted to membership, the laws of the association provided that he should pay a monthly assessment of $1.41, and the court found that it was agreed "that he should pay the same rate of assessment thereafter so long as he remains con-
330 tinually in good standing in said Order." There was also provision for additional assessments from time to time in case one assessment per month should not be sufficient to pay death

and disability claims as they should accrue. Subsequently the by-laws were amended so as to provide that:

"On and after January 1, 1905, all present life benefit members of the association who are then fifty-five years of age, or over * * * shall pay three dollars per month for each $1,000. of life benefits carried."

The court held that such amended law was inoperative so far as Wright is concerned. In that case, however, there was only a general as distinguished from a specific consent to future changes in the laws. There was no express reservation of power in the certificate to alter the laws relating to the fund out of which the beneficiary was to be paid, no express provision in the constitution and laws authorizing such change and no assent in express words in the application for membership to such change. In this case, as we have indicated, there was. In this case, when the application is read in connection with the then existing constitution and by-laws, we find express reference to possible subsequent changes in the laws relating to the widows' and orphans' benefit fund, and express provisions as to the methods by which such changes should be effected. The difference between the cases is the vital one between a mere general reservation of power, which cannot affect vested rights, and a specific reservation of power to interfere with and alter the rights arising under the contract at the time that it was made, to which the member party of the contract has assented. We have examined every case cited by the respondent, which has been decided in this state, and several which were not cited by him. Except the case of Mock v. Supreme Council (supra), we find no case where the provisions of the contract are precisely similar to the case at bar. A very similar case sustaining the power of amendment was decided by the Supreme Court of Illinois. (Fullenwider v. Supreme
331 Council Royal League, 180 Ill. 621, affirming 73 Ill. Appeals 321.) The case of Beach v. Supreme Tent, etc. (supra), in some of its features resembles this case. At the time that the plaintiff in that case joined the order there was a provision in the constitution thereof which reserved the right to amend the laws governing the endowment fund, but no reference thereto was made in the certificate, and the court said:

"The contract expressed in the certificate is absolute * * *. We think that the obligation assumed by the defendant in its certificate of membership should not be impaired by provisions of the constitution and laws of the order to which the attention of the member might never be called, or, at least, they should not be cut down under the reservation of the power to amend."

But in the case at bar the contract expressed in the certificate was not absolute, and the attention of the member was called to the provisions of the constitutions and laws, and he expressly declares in his application for membership that he has become acquainted with the objects of the order. It may be urged that while it is within the power of the defendant not only to increase the number of assessments, but the amount thereof, if necessary to maintain the benefit fund in a condition where it can respond to the demands

made upon it, the increased rate should be fixed according to the age of a member at the date when he joined the organization, and that after a member has for a long period of years paid the assessments due, he should not be called upon as he approaches an advanced period of life to pay a greatly increased sum by way of assessments. But given the power to alter the rate, and the question then becomes only one of reasonableness; and as we have before pointed out, the court has found in this case upon abundant evidence in favor of the reasonableness of the regulation. The validity of this amended by-law has been sustained in several other jurisdictions (Reynolds v. Royal Arcanum, 192 Mass. 150; Gaines v. Supreme Council R. A., 140 Fed. Rep. 978; Bartram v. Supreme Council Royal Arcanum, 6 Ontario Weekly Rep. 404). It may be
that some of these decisions are based upon reasoning not
332 entirely in harmony with the decisions in this state, but if the validity of this amendment can be sustained within the principle of decisions within this jurisdiction, it is certainly for the interests of the order, and also of the individual members thereof, that a uniform rule of construction of its contracts should be adopted.

The judgment should be reversed and a new trial granted, costs to abide the final award of costs. Among the so-called findings of fact are some which are possibly more strictly conclusions of law than findings of fact, as for instance the finding that the change made in 1905 was without the consent of plaintiff and without notice to him, and in violation of his rights. In order that the Court of Appeals may be free to review all of the findings and conclusions in this case, whether of fact or law, the order of reversal should recite that it is upon questions of fact as well as of law.

Supreme Court, Appellate Division, Second Judicial Department.

Clerk's Office, Borough of Brooklyn, N. Y.

I, John B. Byrne, Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department, do hereby certify that the foregoing is a copy of the opinion made by said court upon the Appeal in the above entitled action, and filed in my office on the 19th day of May, 1911, and that the same is a correct transcript thereof and of the whole of the said original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this 18th day of January, 1913.

[Seal Supreme Court, Appellate Division, Second Department.]

JOHN B. BYRNE, *Clerk.*

333 [Endorsed:] Supreme Court, Appellate Division. Samuel Green, Respondent, vs. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent, etc., Appellants. Certified Copy of Opinion of Appellant Division. Howard C. Wiggins, Attorney for Appellants, 103 W. Dominick St., Rome, New York.

334 STATE OF NEW YORK,
Court of Appeals, State Reporter's Office, ss:

I, J. Newton Fiero, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Samuel Green, Appellant, v. Supreme Council of Royal Arcanum et al., Resp'd't, decided by the Court of Appeals on the 10th day of December, 1912, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 6th day of January, 1913.

J. NEWTON FIERO,
As Reporter of the Court of Appeals of the State of New York.

Attest:
[L. S.] R. M. BARBER,
Clerk of the Court of Appeals.

STATE OF NEW YORK,
Court of Appeals:

I, Edgar M. Cullen, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that R. M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and, I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Samuel Green, Appellant, v. Supreme Council of Royal Arcanum et al., Resp'd'ts, decided by the said Court of Appeals on the 10th day of December, 1913, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of R. M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said R. M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature, at the Chambers of said court, at the Capitol of said State, in the City of Albany and State of New York, on the 6th day of January in the year of one thousand, nine hundred and thirteen.

[Seal Court of Appeals, State of New York.]

EDGAR M. CULLEN,
As Chief Judge of the Court of Appeals of the State of New York.

335 SAMUEL GREEN, Appellant,
v.
SUPREME COUNCIL OF ROYAL ARCANUM and VAL M. SCHMITZ, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Respondents.

(Decided December 10, 1912.)

Appeal from a Judgment of the Appellate Division in the Second Department, Reversing, on Facts and Law, a Judgment of the Special Term.

F. J. Moissen, for appellant.
Howard C. Wiggins, for respondents.

Per Curiam: The defendant is a mutual benefit association organized under the laws of Massachusetts, and the plaintiff is one of its members by virtue of his membership in De Witt Clinton Council, No. 419, which is a subordinate division of the association organized and existing within this state. The action is brought to obtain an adjudication of the rights of the parties under the contract between them. The plaintiff became a member of the defendant in 1883. He was then 37 years of age, and the rate for members of that age was then $1.86 for each assessment made at irregular intervals to meet current death losses. In 1898 this rate was changed, with the consent of the plaintiff, to one assessment of $3.16 monthly, and such extra assessments, not exceeding that amount at any one time, as might be properly levied under the constitution and by-laws. In 1905 the defendant again raised its rates, and since then the members of the class to which the plaintiff belongs have each been assessed $6.87 every month until they reach the age of sixty-five, at which time their assessments are automatically fixed at $16.08 per month for the remainder of life. This change in the rate of assessment in 1905 was made without notice to the plaintiff, without his consent and against his objection and protest. From 1905 until February, 1910, he paid under protest the rates as increased in 1905. Then, in February, 1910, he tendered to the proper officer of the defendant the sum of $3.16, which was the amount of the monthly assessment as fixed with his consent in 1898. The defendant, through its officers, refused to accept the tender and threatened to expel the plaintiff unless he should pay the assessment of $6.87 as fixed in 1905. The plaintiff thereupon brought this action, claiming that the increase in 1905 of the rates of assessment was illegal and in violation of his rights under his contract of membership as modified by the changes made with his consent in 1898, and in this contention he was upheld by the court at Special Term. The Appellate Division took a different view, however, and decided that the defendant in its contract with the plaintiff
336 had effectually reserved the right to bind him to the payment of the increased rate by its subsequent amendments of its by-laws. This conclusion was based upon the assumption that there

is a distinction between this case and the cases in which we have held that a membership contract in a mutual benefit association, in which the member agrees to comply with the laws of the order "now in force or that may hereafter be adopted," does not authorize a subsequent amendment of the by-laws without the member's consent if the effect of such amendment is to increase the rate of assessment or to reduce the amount of the benefit as fixed by the contract. (Wright v. Knights of Maccabees, 196 N. Y. 391; Dowdall v. Supreme Council Cath. Mut. Ben. Assn., 196 id. 405; Ayers v. Grand Lodge United Workmen, 188 id. 280; Evans v. So. Tier Mas. R. Assn., 182 id. 453; Beach v. Supreme Tent K. of M., 177 id. N. Y. 100; Langan v. Supreme Council Am. L. of H., 174 id. 266; Shipman v. Protected Home Circle, 174 id. 398; Weber v. Supreme Tent K. of M., 172 id. 490.)

We think there is no distinction between the case at bar and the cases cited. In the plaintiff's application he agreed to make punctual payments of all dues and assessments for which he should become liable, "and to conform in all respects to the Laws, Rules and Usages of the order now in force or which may hereafter be adopted by the same." The certificate issued to him by the defendant was conditioned "that the said member complies, in the future, with the laws, rules and regulations now governing the said Council and Fund, or that may hereafter be enacted by the Supreme Council to govern said Council and Fund."

The learned justice who wrote for the Appellate Division in the case at bar thought that these reservations were so specific as to render them binding upon the plaintiff, but we cannot see wherein they differ from the reservations in Wright v. Knights of Maccabees (supra); Ayers v. Grand Lodge United Workmen (supra); Evans v. So. Tier Mas. R. Assn. (supra), and the other cases in which the member had agreed to be bound by the laws then in force and by such as should thereafter be enacted. It was this general form of reservation that was under consideration in Beach v. Supreme Tent of K. of M. (supra) where Judge Cullen wrote for the court: "It is quite easy for fraternal organizations, such as the defendant, if they deem the provisions for benefits to their members tentative only and desire to have them subject to such modification as the business of the orders may require, to express that in the certificate. So, in the present case, if the certificate had provided that the payments therein specified should be subject to such modification as to amount, terms and conditions of payment and contingencies in which the same were payable as the endowment laws of the order from
337 time to time might provide, the amendments would be applicable to existing members. But I think that nothing less explicit than this appearing in the certificate itself should be effectual for such a purpose. Fairness to persons joining the order required such plain dealing." (p. 105.)

The plaintiff's rights are not affected by the fact that the defendant is a corporation organized under the laws of Massachusetts, nor by the finding of the trial court "that by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary

organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rate of assessment," because (1) the trial court also found "that the contract in all its essentials between the parties was entered into, made and completed in the State of New York," and (2) the statute of Massachusetts, under which the defendant claims the power to amend as to rates of assessment, was not enacted until 1902 and expressly provides that amendment, alteration or repeal shall not take away or impair any remedy which may exist by law.

Although the Appellate Division reversed the judgment entered at Special Term "upon questions of fact as well as of law," it was conceded by counsel upon the argument that there are no disputed facts, and this concession accords with our view of the findings. The actual findings of fact are purely formal and beyond dispute, and the rest, although classified as matters of fact, are really conclusions of law. We have, therefore, ignored the form of the judgment and have treated the record as presenting only a question of law.

The order of the Appellate Division must be reversed, and the judgment of the Special Term affirmed, with costs to the plaintiff in all the courts.

Cullen, Ch. J., Gray, Haight, Vann, Werner, Chase and Collin, JJ., concur.

Order reversed, etc.

338 [Endorsed:] State of New York, Court of Appeals. Samuel Green, Plaintiff-Appellant, vs. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, Defendants-Respondents. Certified Copy of Opinion of the Court of Appeals. Howard C. Wiggins, Attorney for Defendants-Resp'ts, 103 W. Dominick St., Rome, N. Y.

339 Supreme Court of the United States, October Term, 1912.

No. 941.

SUPREME COUNCIL OF THE ROYAL ARCANUM et al., Plaintiffs in Error,

v.

SAMUEL GREEN, Defendant in Error.

In Error to the Supreme Court of the State of New York.

To the Clerk of the Supreme Court of the United States and to F. J. Moissen, Attorney for Defendant in Error.

GENTLEMEN: Please take notice that pursuant to paragraph 9 of Rule X of the Supreme Court of the United States, the plaintiffs in error hereby give notice that they intend to rely upon the thirteen assignments of error returned with the transcript of the record,

and on file with the Clerk of the United States Supreme Court, and that they consider necessary for a proper consideration of the questions presented for review upon the writ of error, the entire record as filed, with the following exceptions and eliminations therefrom:

1. Eliminate the subject matter contained in Exhibit A, found on pages 24 and 25 of the transcript of the record, and substitute in place thereof, "Exhibit A of the answer is set forth as Finding IV on pages 54 and 55 of the transcript of the record, and on — page of the printed record."

2. Eliminate the subject matter of Exhibit B, upon pages 25 and 26 of the transcript of the record, and substitute in place thereof, "Exhibit B of the answer is printed as Exhibit 1, on pages 116 and 117 of the transcript of the record, and on — page of the printed record."

340 3. Eliminate the subject matter of Exhibit C as found on pages 27 and 28 of the transcript of the record, and substitute in place thereof, "Exhibit C of the answer is printed as Exhibit 2 on pages 118 and 119 of the transcript of the record, and on — page of the printed record."

4. Eliminate the table on pages 61 and 62 of the transcript of the record, and substitute in place thereof, "Here follows the table printed under paragraph LI of the decision at page- 40 and 41 of the transcript of the record, and on page — of the printed record."

5. Eliminate the table on page 63 of the transcript of the record, and substitute in place thereof, "Here follows the table printed under paragraph LIII of the decision at pages 41 and 42 of the transcript of the record, and on — page of the printed record."

6. Eliminate the table on pages 69 and 70 of the transcript of the record, and substitute in place thereof, "Here follows the table printed under paragraph LXVIII of the decision at pages 44 and 45 of the transcript of the record, and on — page of the printed record."

7. Eliminate all of Chapter II upon page 123 of the transcript of the record.

8. Eliminate the table upon page 125 of the transcript of the record, and substitute in place thereof, "Here follows the table printed under paragraph LIII of the decision at pages 41 and 42 of the transcript of the record, and on — page of the printed record."

9. Eliminate Sections 1, 3, 4 and 7 on pages 131 and 132 of the transcript of the record.

10. Eliminate Article VI on page 132 of the transcript of the record.

11. Eliminate Article VII on page 133 of the transcript of the record.

12. Eliminate Article VIII on page 133 of the transcript of the record.

341 13. Eliminate paragraphs (4) and (5) on page 135 of the transcript of the record.

14. Eliminate paragraphs (4), (5), (8), (9) and (12) on page 136 of the transcript of the record.

15. Eliminate paragraphs (13), (2) and (3) on page 137 of the transcript of the record.

16. Eliminate Section 8 on page 138 of the transcript of the record.

17. Eliminate Section 4 on page 140 of the transcript of the record.

18. Eliminate paragraphs (1), (2) and (3) of Section 7 on pages 144 and 145 of the transcript of the record.

19. Eliminate paragraph (2) of Section 8 on page 146 of the transcript of the record.

20. Eliminate Sections 1 and 2 of Law XIII on pages 148 and 149 of the transcript of the record.

21. Eliminate all of Articles I, IV and V on pages 152 to 156 of the transcript of the record.

22. Eliminate all of Article IX on pages 159 and 160 of the transcript of the record.

23. Eliminate all of Articles X, XI and XII on pages 160 to 162 of the transcript of the record.

24. Eliminate all of Exhibit D on pages 166 to 205 of the transcript of the record.

25. Eliminate all of Exhibit E on pages 205 to 211 of the transcript of the record.

26. Eliminate all of Exhibit F on pages 211 to 222 of the transcript of the record.

27. Eliminate all of Chapter IV on pages 227 to 229 of the transcript of the record, with the exception of Section 473 on page 229.

342 28. Eliminate all of page 229 after Section 473, and all of pages 230 to 237, both inclusive.

Dated Rome, New York, April 17, 1913.

Yours, &c.,

HOWARD C. WIGGINS,
Attorneys for Plaintiffs in Error.

103 W. Dominick Street, Rome, New York.

343 Supreme Court of the United States, October Term, 1912.

No. 941.

SUPREME COUNCIL OF THE ROYAL ARCANUM et al., Plaintiffs in Error,
vs.
SAMUEL GREEN, Defendant in Error.

In Error to the Supreme Court of the State of New York.

Affidavit of Service.

STATE OF NEW YORK,
County of Oneida, ss:

Grace C. Oakley, being duly sworn, says that she resides at Rome, New York, and is upwards of twenty one years of age; that on the

17th day of April, 1913, she served the hereto annexed statement under paragraph 9 of Rule X of the Supreme Court of the United States, as to printing of the record, upon F. J. Moissen, the attorney for the defendant in error, by depositing a true and exact copy thereof properly enclosed in a postpaid wrapper in the Post Office at the City of Rome, New York, plainly directed to the said F. J. Moissen, at No. 561 Seventy Third Street, Brooklyn, New York.

GRACE C. OAKLEY.

Subscribed and sworn to before me, this 24th day of April, 1913.

J. C. LYNCH, JR.,
Notary Public.

343½ [Endorsed:] 23516. Supreme Court of the United States, October Term, 1912. No. 941. Supreme Council of the Royal Arcanum et al., Plaintiffs in Error, vs. Samuel Green, Defendant in Error. (Copy.) Statement under Paragraph 9 of Rule X as to Printing of the Record. Howard C. Wiggins, Attorney for Pl't'ffs in Error, 103 W. Dominick St., Rome, New York.

344 [Endorsed:] File No. 23,516. Supreme Court U. S., October Term, 1912. Term No. 941. Supreme Council of the Royal Arcanum et al., Pl'ffs in Error, vs. Samuel Green. Specification by plaintiffs in error of errors relied upon and designation of parts of record to be printed, and proof of service of same. Filed, April 26, 1913.

345 Supreme Court of the United States, October Term, 1912.

No. 941.

SUPREME COUNCIL OF THE ROYAL ARCANUM et al., Plaintiffs in Error,
against
SAMUEL GREEN, Defendant in Error.

In Error to the Supreme Court of the State of New York.

To the Clerk of the Supreme Court of the United States and to Howard C. Wiggins, Esq., Attorney for Plaintiff- in Error.

GENTLEMEN: Please to take Notice that in pursuance to Paragraph 9 of Rule X of the Supreme Court of the United States the defendant in error hereby gives Notice that he desires to have printed in the record for review upon the writ of error herein the whole of Chapter IV on pages 227 to 229 of the transcript of the record to and including Section 473 on page 229.

Dated Brooklyn, New York May 1, 1913.

Yours etc.,

F. J. MOISSEN,
Attorney for Defendant in Error.

561 73rd Street, Brooklyn, New York.

346 [Endorsed:] 23516. Supreme Court of the United States, October Term, 1912. No. 941. Supreme Council of the Royal Arcanum et al. Pl'ff*t* in Error, against Samuel Green, Def't in Error. Statement for Def't in Error under Paragraph 9 of Rule X. F. J. Moissen, Att'y for Def't in Error, 561 73rd Street, Brooklyn, N. Y.

347 [Endorsed:] File No. 23,516. Supreme Court U. S., October term, 1912. Term No. 941. Supreme Council of the Royal Arcanum et al., Pl'ffs in Error, vs. Samuel Green. Designation by defendant in error of additional parts of record to be printed. Filed May 5, 1913.

Endorsed on cover: File No. 23,516. New York Supreme Court. Term No. 438. Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of De Witt Clinton Council, No. 419, of the Royal Arcanum, plaintiffs in error, vs. Samuel Green. Filed January 24th, 1913. File No. 23,516.

2

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Supreme Court of the United States

OCTOBER TERM, 1914
No. 106

SUPREME COUNCIL OF THE ROYAL ARCANUM ET AL.
Plaintiffs in Error

v.

SAMUEL GREEN
Defendant in Error

IN ERROR TO THE SUPREME COURT OF NEW YORK

BRIEF FOR PLAINTIFFS IN ERROR

HOWARD C. WIGGINS
Attorney for Plaintiffs in Error

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JOSEPH A. LANGFITT
of Counsel

CITY OF BOSTON
PRINTING DEPARTMENT
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Supreme Court of the United States.

OCTOBER TERM, 1914.
No. 106.

SUPREME COUNCIL OF THE ROYAL ARCANUM ET AL.,
Plaintiffs in Error,

v.

SAMUEL GREEN,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF NEW YORK.

BRIEF FOR PLAINTIFFS IN ERROR.

This is a writ of error to the Supreme Court of New York seeking to reverse a judgment of that court (Record, pp. 117, 118; fol. 284, 285), entered December 30, 1912, pursuant to a remittitur from the Court of Appeals, whereby the Court reversed an earlier order of the Appellate Division, and affirmed a judgment entered by the Special Term of the Supreme Court on July 23, 1910. (Record, pp. 26–28; fol. 49–53.) This last mentioned judgment directed the plaintiffs in error to receive the sum of $3.16 as the regular assessment from the defendant in error, and enjoined them from suspending him as a member of the plaintiff in error Order upon paying, or offering to pay, said sum of $3.16 for each assessment lawfully imposed, once in each calendar month until his decease. (Record, p. 27; fol. 52.)

STATEMENT OF FACTS.

1. The plaintiff in error, the Supreme Council of the Royal Arcanum (hereinafter called the Order), is a fraternal beneficiary corporation, organized in 1877, and conducting its affairs under the laws of Massachusetts, on the lodge system, without profits to any person, with educational and social features, and provision for benefits to the beneficiaries of deceased members. (Findings XXVI.–XXX., XXXIV.; Record, p. 18; fol. 35, 36.)

2. The Order has been duly admitted to transact business in the State of New York. (Finding XLI.; Record, p. 19; fol. 38.)

3. The defendant in error became a member of DeWitt Clinton Council No. 419, a subordinate council of the Order, in June, 1883, pursuant to a written application for membership, and received a benefit certificate in favor of his wife for $3,000. (Findings XLII., XLVI.; Record, pp. 19, 20; fol. 38, 39.)

4. The defendant in error was between thirty-seven and thirty-eight years of age at the time he joined the Order, and paid an assessment of $1.80 at irregular intervals, whenever required to meet death losses. (Findings VII., L.; Record, pp. 15, 20; fol. 30, 40.)

5. In 1898, the Order amended its by-laws, increasing the assessments of the defendant in error from $1.80 to $3.16, the latter amount to be paid monthly, with provision for extra assessments, if necessary, and for an "emergency fund." The defendant in error admitted that these changes were duly made, and paid assessments at this rate from 1898 to 1905. (Findings LII.–LIV.; Record, pp. 21, 22; fol. 40–42.)

6. In May, 1905, the Order again amended its by-laws, increasing the assessments of the defendant in error from

$3.16 to $6.87, which amount he paid under protest from October 1, 1905, down to the commencement of the present action, in February, 1910. This last change also included a provision, whereby the rate of the defendant in error would be further increased to $16.08 per assessment when he should become sixty-five years old, unless prior to that time he should elect a level rate known as "Option A," which remains constant throughout life at a figure varying in proportion to the age at which it is chosen, and being $11.97 for a person sixty years of age who holds a $3,000 certificate. (Findings LV., LXVIII., LXXVIII.; Record, pp. 22–25, 64–74; fol. 43–47, Exhibit G, (4); Record, p. 86; fol. 224, 225.)

7. The changes made in 1905 were regularly adopted by the Order by a vote of 106 to 3 (the entire membership of the Supreme Council being 115) after a careful examination of its condition and full discussion. The rates thereby established represent the actual cost of the benefits promised to members at each age, and equitably apportion the cost of protection among the members according to age and risk. (Findings LVI., LXVII.; Record, pp. 22, 23; fol. 43, 44.)

8. By the statutory law, or the Public Acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the Order is one, have power to change and amend their rates of assessment. (Finding LXXVII.; Record, p. 25; fol. 47.)

9. In November, 1905, a bill in equity was brought in the Supreme Judicial Court of the Commonwealth of Massachusetts by Stephen W. Reynolds and fifteen other members of the Order against it, complaining in behalf of themselves and of all other members of the corporation who might join in their bill of complaint, on the ground that the changes complained of were invalid. A hearing upon the merits was had in the Supreme Judicial Court of

Massachusetts, resulting in a decree, sustaining the validity of the amendments complained of, and dismissing the bill with costs.

A copy of the judgment and proceedings of the Supreme Judicial Court of Massachusetts in this case, duly certified by the attestation of the clerk with the seal of the court annexed, together with a certificate of the Chief Justice that the said attestation was in due form, in accordance with the requirements of the Revised Statutes of the United States, c. 17, § 905, is set out in the Record as Exhibit K, pp. 96–109; fol. 248–269.

10. The defendant in error began this action in the Supreme Court of Kings County at Brooklyn, New York, on February 19, 1910, alleging in his complaint that the changes adopted in 1905 were unauthorized, that he was not bound by them, and asking an injunction restraining the Order from collecting the increased assessments. (Record, pp. 2–5; fol. 3–9.)

11. The plaintiff in error duly filed its answer, setting out (1) that it was a fraternal beneficiary corporation, organized and existing under the laws of Massachusetts, duly admitted to New York, and that the amendments complained of were expressly authorized by and adopted pursuant to the terms of the contract between the parties which included the Statutes of Massachusetts as a part thereof; (2) that the Public Acts of Massachusetts authorized the changes complained of; (3) that on or about December 2, 1905, Stephen Reynolds, a member of the Order, and fifteen other members thereof who joined the Order under the same terms and conditions as the defendant in error, filed a bill in equity in the Supreme Judicial Court of Massachusetts in behalf of themselves and all other members of the Order as a class action or "shareholders' bill" to enjoin the Order from collecting the amended rate described in the complaint; that on May 17, 1906, after

full hearing and argument, the Supreme Judicial Court of Massachusetts, the court of last resort in that state, unanimously found and determined that the acts and the changes of rates complained of by the defendant in error were fully authorized by the laws of Massachusetts and by the contract between the parties; that the same were not in violation of the rights of any of the members of the Royal Arcanum, and dismissed the bill. The said answer further set out that the questions sought to be raised by the defendant in error in the present complaint were concluded by the aforesaid judgment of the Supreme Judicial Court of Massachusetts and that under the Constitution of the United States the same was entitled to full faith and credit in the State of New York, and required that the complaint be dismissed. (Record, pp. 6–13; fol. 10–23.)

12. At the trial of the case before the Court without a jury the plaintiff in error offered in evidence a copy of the judgment and proceedings in the case of *Reynolds et al.* v. *Supreme Council Royal Arcanum*, authenticated, as described above, which the Court refused to admit in evidence, and excluded subject to the exception of the plaintiff in error. (Record, pp. 62, 96–108; fol. 115, 248–268.)

13. The Court found that by the statutory law or public acts of the State of Massachusetts, fraternal beneficiary organizations, of which the Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment (Finding LXXVII.; Record, p. 25), but also ruled that the changes adopted in 1905 were not binding upon the defendant in error, that he was entitled to maintain his membership in the Order upon paying assessments fixed at the 1898 rate, enjoined the plaintiff in error from suspending him for failure or refusal to pay the amended rate, and declared that as to the defendant in error, the changes adopted in 1905 were a violation of the contract between the parties, and were as to the

defendant in error "absolutely void." (Judgment, Second-Fifth; Record, pp. 27, 28; fol. 52, 53; Opinion by Trial Court, Record, pp. 110–112; fol. 271–276.)

14. The Appellate Division of the Supreme Court of the State of New York reversed the judgment of the trial term. (Record, pp. 114, 115; fol. 277½–279, Opinion, Record, pp. 136–143; fol. 322–333.)

15. The Court of Appeals of the State of New York reversed the order of the Appellate Division, and affirmed the judgment of the trial court, saying: "The plaintiff's (defendant in error) rights are not affected by the fact that the defendant (plaintiff in error) is a corporation organized under the laws of Massachusetts, nor by the finding of the trial court that by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rate of assessment." (Record, pp. 146, 147; fol. 337.)

The Court of Appeals omitted any mention of the exclusion by the trial court of the judgment of the Supreme Judicial Court of Massachusetts in the case of *Reynolds* v. *Supreme Council of the Royal Arcanum*, although this judgment was pleaded in the defendant's original and amended answers (Record, p. 12; fol. 22), and such exclusion and the exception of the Order thereto were discussed at length both in the oral argument and on pages 60–68, inclusive, of the Order's brief before the Court of Appeals.

16. Pursuant to this opinion the case was remitted to the Special Term of the Supreme Court, which entered judgment in favor of the defendant in error, as above indicated, on December 30, 1912. (Record, pp. 116, 117; fol. 281–284.)

17. A writ of error was granted the plaintiff in error by this court on January 8, 1913. (Record, p. 124; fol. 297.)

SPECIFICATION OF ERRORS.

The petition for the writ of error attacks the judgment of the courts of New York on the following grounds:

1. Said courts erred in holding by this affirmance of the judgment of the trial court in disregard of the Federal Constitution and the statutes aforesaid that an assessment upon the members of a Massachusetts corporation duly levied upon them in respect to their membership in such corporation, by virtue of the Public Acts of Massachusetts ratified and affirmed by the highest court of Massachusetts, the state of the domicile of the corporation, is not binding upon a member of the corporation residing in the State of New York.

2. Said courts having found as a fact that under the Public Acts of Massachusetts the plaintiff in error corporation had the power to adopt the amendments in question, erred by their failure and refusal to give full faith and credit to said Public Acts of Massachusetts as required by Article IV., § 1, of the United States Constitution and the Statutes of the United States enacted pursuant thereto.

3. The said courts erred in ordering and adjudging that the order of the Appellate Division of the Supreme Court appealed from in said action be reversed and that the judgment of the Special Term in said action be affirmed, because the said judgment of the Special Term was made and rendered in disregard of the Constitution of the United States, Article IV., § 1, and the Statutes of the United States passed in pursuance thereof.

4. The said courts erred in holding and deciding that the judgment of July 23, 1910, in the above-entitled action

should be affirmed, and that the defendant in error, Samuel Green, should have costs against the plaintiffs in error in the sum of four hundred fifty-nine dollars and thirty-two cents ($459.32), because said judgments were rendered in disregard of the Constitution of the United States, Article IV., § 1, and the Statutes of the United States passed in pursuance thereof.

5. The said courts erred in holding by the reversal of the order of the Appellate Division and the affirmance of the said judgment entered on July 23, 1910, that the trial court gave full faith and credit as required by the Constitution and statutes aforesaid to the Public Acts of Massachusetts, as proved in the case.

6. The said courts erred in holding by the affirmance of said judgment entered July 23, 1910, that the refusal by the trial court to receive in evidence a duly certified and authenticated copy of a judgment roll in an action in the Supreme Judicial Court of Massachusetts, wherein the plaintiff in error corporation was defendant and one Stephen Reynolds and certain other parties in privity with and acting as the representatives of the defendant in error were plaintiffs, wherein a decree was entered in favor of the plaintiff in error and binding upon the defendant in error in regard to the matters and things involved in the present proceeding then before said trial court, did not violate the provisions of Article IV., § 1, of the Federal Constitution and the Act of Congress pursuant thereto, prescribing that such judgment roll, authenticated as aforesaid, should have such faith and credit given to it in every court within the United States as it would have by law or usage in the court of the state from which it was taken.

7. The said courts erred in failing to affirm the order of the Appellate Division reversing the judgment of the trial court, because said judgment was based upon the refusal

of said trial court to receive in evidence the above described judgment of the courts of Massachusetts, certified and proved as required by the Act of Congress in regard to the proof of judicial acts and proceedings, and a refusal to give such judgment the faith and credit in the courts of New York to which said judgment would be entitled by law and usage in the courts of the State of Massachusetts in which it was rendered, as said trial court was required to do by the Constitution of the United States, Article IV., § 1, and the Statutes of the United States passed in pursuance thereof.

8. The said courts erred in holding, by the affirmance of the said judgment of the trial court, entered on July 23, 1910, that the Supreme Court of the State of New York gave full faith and credit to the judgment of the Supreme Judicial Court of the State of Massachusetts in the case of *Reynolds* v. *Supreme Council of the Royal Arcanum*, as pleaded and offered to be proved in the case, as it was required to do by the Constitution of the United States and the Statutes of the United States as aforesaid.

9. The said courts erred in not holding and deciding that the judgment and opinion aforesaid, in said Reynolds case, was a conclusive assertion of the validity of the amendments here in question to the by-laws of the plaintiff in error corporation, so far as the defendant in error Green was concerned, and that full faith and credit as required as aforesaid should be given to said judgment in the courts of New York.

10. The said courts erred in failing to give, as required by the Federal Constitution and statutes aforesaid, the judgment and opinion in the Reynolds case the same effect in the courts of New York as it would have had, or had, in the courts of Massachusetts, the domicile of the corporation.

11. The said courts erred in not holding that the defendant in error, Samuel Green, a member of the plaintiff in error corporation, was bound in his relations with that corporation by the judgment in its favor in said Reynolds case, by a court of competent jurisdiction, and having jurisdiction of the parties to and subject matter of the present case, which judgment was duly pleaded and offered in evidence in this action.

12. The said courts erred in sustaining and affirming by the decision and judgments aforesaid the refusal of the trial court to apply to the case the laws of Massachusetts, the domicile of the plaintiff in error corporation as proved in the case, for the purpose of determining the corporate power of said corporation and the rights and liabilities under the contract of membership in it mentioned in the pleadings, as required by the Federal Constitution and the statutes aforesaid.

ANALYSIS OF SPECIFICATION OF ERRORS.

The foregoing assignments of error present four general grounds of objection to the judgment under review.

1. This judgment denied proper faith and credit to the Public Acts of Massachusetts. (Assignments 2, 5.)

2. This judgment denied proper faith and credit to a Massachusetts judgment which was binding upon the parties to the present action. (Assignments 6, 7, 8, 9, 10.)

3. This judgment unlawfully prevented the collection of an assessment duly levied upon a New York member of a Massachusetts corporation in respect to his membership in the corporation in accordance with the aforesaid Public Acts and judicial proceedings of the State of Massachusetts. (Assignments 1, 11, 12.)

4. This judgment is a violation of Article IV., § 1, of the Constitution of the United States and the Act of Congress thereunder. (Assignments 3, 4.)

The interests of the Royal Arcanum, the plaintiff in error, make the case one of very great importance. With more than a quarter million members domiciled in the various States of the Union and the Provinces of Canada, it has outstanding certificates promising the payment of approximately $500,000,000. It has already paid out in death benefits upwards of $169,000,000. More than a million people are dependent upon it for protection against the loss by death of their bread-winners.

The question of its right to collect assessments from its members upon an equitable and uniform basis is absolutely vital to its continued existence.

Moreover, in the last analysis, the existence of the fraternal beneficiary system of the United States depends upon the determination of the question here presented.

There are upwards of a hundred fraternal benefit societies in the United States, with more than eight million members, with payments actually made aggregating more than $2,270,000,000, and with certificates outstanding promising the payment of more than $9,300,000,000.

Fraternal Monitor, "Statistics of Fraternal Societies" (1914 edition), pages 206, 214, 232.

These societies are not restricted in the transaction of their business by state lines. They are most potent factors in uplifting the general level of living in this country, both by furnishing support when financial aid is most

needed, and by binding together the citizens of widely separated states in a real community of interest.

These societies are all of comparatively recent origin, and until very recent years have been largely experimental. Nearly all of them began with rates wholly inadequate to redeem their outstanding obligations. The Legislatures of various states, recognizing the importance of the fraternal beneficiary system and the necessity of collecting sufficient funds to pay death benefits, have passed statutory enactments requiring such societies to provide for the collection of sufficient rates of assessment to fulfill their promises, and the ultimate adoption of a full legal reserve basis. Compliance with these legislative requirements has universally necessitated the amendment of by-laws, increasing the rates of assessment.

The present case is an illustration of this process. The Legislature of Massachusetts, the state of the domicile of the corporation, has passed a law requiring an increase in rates upon pain of dissolution (Acts of Massachusetts, St. 1911, c. 628, § 23), and the Supreme Judicial Court of Massachusetts has approved the exact changes here in question.

> *Reynolds* v. *Supreme Council Royal Arcanum*, 192 Mass. 150.

If now the courts of New York are permitted to enjoin the collection of the very same assessments which the State of Massachusetts has ordered the Royal Arcanum to collect, what is the Royal Arcanum to do about it? Unless the courts sanction equitable and reasonable changes in by-laws of such societies, the societies themselves will be inevitably destroyed by the conflicting requirements of the legislative and judicial authorities.

At the outset of the argument, we are caused some perplexity over the brief of the defendant in error,— partly by its failure to consider what we understand to be the controlling factors in the matter now before the Court, but still more, by its intemperate, unprofessional and unwarranted charges of "deceit intentionally made upon this Court." (Page 13. See, also, pages 7, 8, 9, 10, 11, 40, 57.)

We believe that proper respect for ourselves and for this Court forbids any reply to language of this sort, except to ask careful attention to the simple facts set out in the printed record, which are sufficient to justify our statements and to refute these accusations.

ARGUMENT.

I.

THE COURT ERRED BY FAILING TO RECOGNIZE THE ESSENTIAL NATURE OF THE CONTRACT BETWEEN THE PLAINTIFF IN ERROR AND THE DEFENDANT IN ERROR.

The Court of Appeals of the State of New York decided this case without over much consideration in a *per curiam* opinion upon the assumption that there was "no distinction" between it and the cases of

Wright v. *Knights of the Maccabees*, 196 N. Y. 391.
Dowdall v. *Supreme Council Catholic Mut. Benefit Association*, 196 N. Y. 405.
And certain other New York cases cited by the court.

The Court did not discuss the rights raised under the United States Constitution beyond the brief assertion that,

> "The plaintiff's rights are not affected by the fact that the defendant is a corporation organized under the laws of Massachusetts, nor by the finding of the trial court 'that by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rate of assessment,' because (1) the trial court also found 'that the contract in all its essentials between the parties was entered into, made and completed in the state of New York,' and (2) the statute of Massachusetts, under which the defendant claims the power to amend as to rates of assessment, was not enacted until 1902

> and expressly provides that amendment, alteration or repeal shall not take away or impair any remedy which may exist by law." (Record, pp. 146, 147.)

Apparently the Court of Appeals entirely overlooked the exception to the exclusion of the Massachusetts judgment in the case of *Reynolds* v. *Supreme Council Royal Arcanum* (Reported in 192 Mass. 150), although this judgment was pleaded in the defendant's answer (Record, p. 12; fol. 22), offered in evidence at the trial (Record, p. 62; fol. 114, 115), and its admissibility and effect were fully argued on pages 60-68, inclusive, of the defendant's brief before the Court of Appeals.

No question as to the force and effect of the public acts or judicial proceedings of one state in the courts of another state were discussed or raised in any way in any of the cases referred to by the New York Court of Appeals as precedents for the decision under review. In this case, these questions are not incidental technicalities, lugged in merely to raise a Federal question, but constitute the real substantial foundation upon which the case of the plaintiff in error has been based throughout the entire litigation growing out of the changes complained of, before the courts of every jurisdiction in which their validity has been challenged.

The error of the New York Court of Appeals in respect to the Federal question involved can be explained only on the assumption it failed to understand the real nature of the contract brought before it in this case.

The assumption that the whole matter is a simple contract of commercial life insurance, that the plaintiff in error is an "insurance company," the defendant in error a "policy holder," and that that is all there is to it, underlies all the reasoning and conclusions of the New York Court. Is this assumption in accordance with either the law or the facts in the case?

1. What is the precise contract in this case?

It must be conceded by everyone that this contract consists of several documents, membership application, membership certificate, the by-laws of the order and the statutes of the state under which the corporation was organized, all of which are to be taken together to determine the contract.

Sabin v. *Phinney*, 134 N. Y., p. 428.
Shipman v. *Protected Home Circle*, 174 N. Y. 398.
Foley v. *Supreme Council Royal Arcanum*, 151 N. Y. 196.
Brenizer v. *Supreme Council Royal Arcanum*, 141 N. C. 409
Niblack, Mutual Benefit Societies (2d. ed.), § 136, and cases cited.

In the Shipman case, above cited, at page 409, the Court said:

> "A contract of insurance based upon membership in a benefit society rests upon radically different legal principles than those which govern the ordinary life insurance policy. As stated by Bacon in his work on benefit societies (sec. 321), 'The chief difference between ordinary contracts of life insurance companies and those usual in benefit societies is that in the former the policy and documents referred to in it contain the agreement, while in the latter the certificate together with the charter and by-laws are to be looked to for the contract.' This distinction is clearly emphasized in Sabin *v.* Phinney (134 N. Y. 428), where this Court said: 'The statute under which the corporation was organized, its by-laws, together with the application for and the certificate of membership, constituted the contract which existed between the member and the society, which instruments, construed together, measure the right of these litigants.' "

It is important to examine each of these instruments, and the circumstances connected with it.

(*a*) The MEMBERSHIP APPLICATION, the first step in the contract, is addressed to DeWitt Clinton Council, substantially as follows:

APPLICATION FOR MEMBERSHIP IN THE ROYAL ARCANUM.

Having become acquainted with the objects of your Order, I hereby make application for full rate *membership* in your Council . . . I am not now a member of the Order, . . . and have never been expelled from any Council of this Order; and am a believer in a Supreme Being. . . . I direct that in case of my decease, all benefit to which I may be entitled from the Royal Arcanum be paid to Louisa Green, related to me as my wife, subject to such future disposal of the benefit, among my dependents, as I may hereafter direct in compliance with the Laws of the Order. . . . *I agree to make punctual payments of all dues and assessments for which I may become liable, and to conform to and abide by the Constitution, Laws, Rules, and Usages of the said Council and Order now in force, or which may hereafter be adopted by the same.* . . .

(Sig.) SAMUEL GREEN.

(Record, p. 63; fol. 117.)

Pursuant to this application the plaintiff was duly *initiated* into the Order on June 19, 1883, by a ritualistic ceremony performed by DeWitt Clinton Council (Record p. 64; fol. 118), including the acceptance of an obligation that he would strictly comply with all laws, rules and usages of the fraternity established by the Supreme Council of the Royal Arcanum, that he would hold allegiance to said Supreme Council, and be loyal thereto as the Supreme Authority of the entire order. (Record, Finding XLV., p. 20; fol. 38.)

(*b*) A BENEFIT CERTIFICATE was thereafter issued to the plaintiff as follows:

ROYAL ARCANUM BENEFIT CERTIFICATE.

(SEAL.) (SEAL.)

This certificate is issued to Samuel Green, a member of De Witt Clinton Council, No. 419 Royal Arcanum, located at Brooklyn, New York, upon evidence received from said Council that he is a contributor to the "WIDOWS AND ORPHANS' BENEFIT FUND" of this Order: and upon condition that . . . his application for membership . . . be made a part of this contract, and *upon condition that the said member complies in the future with the laws, rules and regulations now governing the said Council and Fund or that may hereafter be enacted by the Supreme Council to govern said Council and Fund.* These conditions being complied with, the Supreme Council of the Royal Arcanum hereby promises and binds itself to pay out of its Widows' and Orphans' Benefit Fund to Louise Green (wife) a sum not exceeding Three Thousand Dollars, in accordance with and under the provisions of the laws governing said Fund, upon satisfactory evidence of the death of said member, and upon the surrender of this Certificate; provided that said member is in good standing in this Order at the time of his death. . . . In Witness Whereof, the Supreme Council of the Royal Arcanum has hereunto affixed its Seal and caused this Certificate to be signed by its Supreme Regent and attested and recorded by its Supreme Secretary at Boston, Mass., this 21st day of June, A. D. 1883.

JOHN HASKELL BUTLER,
Supreme Regent.

Attest:
W. O. ROBSON,
Supreme Secretary.

I accept this certificate on the conditions named herein.
(Sig.) SAMUEL GREEN.
(Record, p. 65.)

(*c*) The "LAWS OF THE ORDER," referred to in each of the preceding documents, include (1) *its charter and the statutes of Massachusetts governing it, at all times subject to amendment by the Legislature* (Record, pp. 70, 71, 91–95; fol. 128, 129, 239–247, and (2) the corporate by-laws (Record, pp. 71–89; fol. 130–237), made pursuant to this statutory authorization, which set out the organization of the Order, prescribe the rights and obligations of the members in respect to the different funds, social features, etc., of the Order, *and provide for subsequent amendments in all parts by a two-thirds vote of the representatives of the entire membership.*

2. These documents and transactions do not form a contract of ordinary commercial life insurance.

(*a*) THESE FOUR PAPERS DO NOT LOOK LIKE THE USUAL LIFE INSURANCE POLICY.

A "policy" is a simple mercantile contract of indemnity against loss for a specified consideration. It is not a collection of documents, but a single instrument, like a deed, stating the entire contract, and especially the consideration or premium, which is an essential part of the bargain.

> *Hooper* v. *California*, 155 U. S. 648, 654.
> Blackstone, Com. II., xxx.
> 7 Century Dictionary, "Policy," 4593.
> Comstock, J., in *Trustees of the First Baptist Church* v. *Brooklyn Fire Insurance Co.*, 19 N. Y. 305, 307, 308; 28 N. Y. 153, 165.

Moreover, this limitation of a life insurance policy to a single document, physically complete in itself, and con-

taining the entire contract, is almost invariably required by statute. See, for example:

Consolidated Laws of New York, c. 28 (Insurance Law), § 58, 3 Consolidated Laws, 1714.
Massachusetts, St. 1907, c. 576, § 75, clause 3.
New York Life Insurance Co. v. *Hardison*, 199 Mass. 190, 194.

(*b*) THESE PAPERS OMIT CERTAIN FEATURES WHICH ARE CHARACTERISTIC OF A LIFE INSURANCE POLICY.

(1) Although this contract is ten times as voluminous as the ordinary life insurance policy, these papers contain *no definite statement of a fixed premium or definitely agreed consideration*, which, as indicated by the definition above, is an essential characteristic part of an insurance policy.

(2) So far as the form of the contract goes, there is a somewhat similar *omission of an exact statement of the amount of benefit promised:* it is a sum not exceeding a given amount. As a practical matter, the implications of the contract may bind the Order to pay this maximum amount, but the form of statement is a significant indication that the makers of the contract regarded it as something different from ordinary commercial life insurance.

(3) Moreover, this contract contains *no speculative or investment features.* There are *no surrender values, endowment clauses or "policy loans."* The benefit cannot be made payable to the member's estate, and contracts by a beneficiary to pay assessments are forbidden by law.

Revised Laws of Massachusetts, c. 119, § 8 (Record, p. 94; fol. 245).
Daniels v. *Pratt*, 143 Mass. 216.
Cook v. *Improved Order of Heptasophs*, 202 Mass. 85, 88.

Some or all of these features enter into every contract of ordinary "old line" insurance and several of them are required by statute. Their entire absence from the contract in question shows it essentially different from the usual contract of commercial life insurance.

This difference has recently been emphasized by the Supreme Court of Missouri in reversing, upon reargument, one of its own decisions in which it had previously held that the nonforfeiture clause of the Missouri statute applied to the contracts of fraternal beneficiary corporations. "We have carefully considered every phase of this question . . . and we see no escape from the conclusion that the nonforfeiture statute, § 7897, has no application to benefit certificates of the character upon which this suit is based."

Westerman v. *Supreme Lodge K. of P.*, 196 Mo. 670; 5 L. R. A. (N. S.) 1114.

(*c*) THESE PAPERS CONTAIN VERY MANY FEATURES WHICH INDICATE A CONTRACT CHARACTERISTICALLY AND FUNDAMENTALLY DIFFERENT FROM A LIFE INSURANCE POLICY.

(1) The applicant's solemn assertion, in the very first of these documents, the membership application, "*am a believer in a Supreme Being,*" indicates an intention to consider factors which have no place in an ordinary contract of life insurance. (Record, p. 64; fol. 117.)

(2) An equally solemn statement of a *noncommercial and charitable purpose* of the organization, contained in its charter, repeated in the by-laws and incorporated in the state statute, differentiates the contract formed by these documents from commercial life insurance.

"for the purpose of fraternal union, aid to its

members, and their dependents, assisting the widows and orphans of deceased members."

Charter of the Royal Arcanum. (Record, p. 71; fol. 128.)

(3) The constant emphasis upon *ritualistic forms and ceremonials* recognized as an essential part of the relationship created by these documents, both in the statutes of the state creating the corporation (Record, pp. 91, 92; fol. 239, 240) and in the by-laws of the Order (Record, pp. 79, 80; fol. 149–151), indicates the existence of something quite different from a simple contract of commercial life insurance. These ceremonies are regarded as absolutely prerequisite to membership, and to the right to hold office.

A life insurance company has no requirements of this kind.

1 Bacon on Benefit Societies (3d ed.), § 63a.
Matkin v. *Supreme Lodge K. of H.*, 82 Tex. 301.
Arrison v. *Supreme Council*, 129 Iowa 303.
Loyal Mystic Legion v. *Richardson*, 76 Neb. 562.

(4) *Membership in the Order* is the most frequently discussed and carefully defined feature of this fourfold contract. In spite of the many omissions made to shorten the record, and to confine it to the more strictly business features of the case, the number of references in the matter printed to the terms and conditions of membership is most significant.

For example, the charter is granted to a corporation "for the purpose of fraternal union, aid to its members," "the education . . . of its members," "assisting the widows and orphans of deceased members," "establishing

a fund for the relief of sick and distressed members," etc. (Record, p. 71; fol. 129.)

The application (Record, p. 63) nowhere mentions a definite amount of insurance, but asks only for membership of a certain kind.

The certificate (Record, p. 65) declares in its first line that it is issued "to Samuel Green, a member of De Witt Clinton Council," and is more a membership certificate than it is anything else.

The by-laws repeat the fraternal purpose and membership objects of the Order, and at the outset, limit the enterprise to members who must be "white men of sound bodily health, good moral character and socially acceptable." (Record, p. 72.)

It is hardly necessary to call attention to the fact that provisions of this kind, which measured by bulk make up a good half of the contract before the court, have no place in an ordinary contract of commercial life insurance. Moreover, the limitation to "white men" is unlawful for a life insurance company, which is often forbidden to discriminate on grounds of color. See for example:

3 Consolidated Laws of New York, c. 28 (Insurance Law) § 90.
Massachusetts, St. 1907, c. 576, § 70.

(5) Closely connected with the emphasis upon membership is the *limitation of benefits to the kinsmen or dependents of members.* This limitation permeates every part of the contract and is wholly different from the "insurable interest" of the commercial life insurance company.

Rev. Laws Massachusetts, c. 119, § 6 (Record, p. 93; fol. 243.)
Application for Membership (Record, p. 64).
By-laws (Record, pp. 72–78; fol. 131–147).

(6) *The organization of the membership into local groups or councils*, and the conduct of the business affairs of the Order in each community by such group is recognized in every part of this contract.

The ordinary life insurance contract contains no features of this kind.

(7) Closely connected with this, and sharply differentiating the contract here in question from a life insurance policy are the numerous provisions in it for *a purely representative form of government, providing for large power of self-regulation, control over all rights arising from membership in it, and in the conduct of its business.*

The statute prescribes a representative form of government, and gives it full power to regulate its meetings, benefits, assessments, conditions of membership, and other corporate affairs by by-laws.

Rev. Laws, c. 119, §§ 1, 2, 6. (Record, pp. 91, 92.)

The courts have also fully recognized the governmental and self-regulating rights of these corporations.

Chamberlain v. *Lincoln*, 129 Mass. 70.
Spillman v. *Supreme Council Home Circle*, 157 Mass. 128.

As already pointed out, the contract in question provides that each local council shall manage its own local affairs, and shall elect at least one delegate to the state council. Each state council manages the affairs of the order in its jurisdiction, and elects at least one delegate to the national, or Supreme Council, which is made up of the aggregate number of delegates so chosen, together with the survivors of the original incorporators. In this

manner the members legislate for themselves, enact new laws or modify existing ones, and actually manage the society.

On the other hand, in most commercial life insurance companies, members have no voice in management, and even in mutual companies have only slight participation in the affairs of the company.

(*d*) Even Where the Same Factors Appear in Both Contracts, the Legal Effect Attached to Them is Different.

Practically the only thing that the contract in question has in common with a life insurance policy is that both have to do with the interests of their holders in a fund which is to be distributed after the death of such holders. But even here, the two contracts are radically different. Under this contract the member's interest in the "benefit fund" is wholly different from the policyholder's interest in the "reserve fund" of a life insurance company.

The rights under an insurance policy are purely individual and vest with the issue of the contract. The rights created by the contract in question are rights in common, and are not vested during the life of the member.

Money paid in premiums under a life insurance policy "belongs, in one sense, to the insured who has paid them, somewhat as a deposit in a savings bank is said to belong to the person who made the deposit."

N. Y. Life Ins. Co. v. *Statham*, 93 U. S. 24, 34, 35.

Thus, under the policies of a commercial insurance company the insured is "deemed the equitable owner of some part of the money which he has paid as premiums." This is the justification for surrender values, and non-

forfeiture provisions, and also for recognizing an assignable interest in the insured, even before the maturity of the contract.

Hazen v. *Massachusetts Mut. Life Ins. Co.*, 170 Mass. 254.
Pingrey v. *Nat. Life Ins. Co.*, 144 Mass. 374.
Bliss on Life Insurance, § 318.

"It is, indeed, the general rule that a policy, and the money to become due under it, belong the moment it is issued, to the person or persons named in it as the beneficiary or beneficiaries, and that there is no power in the person procuring the insurance by any act of his, by deed or by will, to transfer to any other person the interest of the person named."

Washington Central Bank v. *Hume*, 128 U. S. 195, and cases cited.

On the other hand, and exactly opposite to these principles, which are fundamental in dealing with insurance policies, there are *no vested rights under the contracts of a fraternal beneficiary corporation.*

"The distinctions between the beneficiary orders, or societies, and the regular life insurance companies nowhere appear more plainly than when we consider the rights of the beneficiary named in the certificate or policy. . . . In a policy of life insurance . . . the rights of the person to whom the insurance is to be paid become at once vested when the policy is delivered and cannot be altered or affected except by his consent. The member of a beneficiary organization, on the other hand, has no property interest in the benefit but only the naked power of designating some one to receive it. This designated recipient also has no property, nor vested rights, in the benefit, because

his interest is contingent and uncertain . . . the designated beneficiary has no property in the benefit to be paid, but a mere expectancy. . . . This principle is now so well settled that no further authorities need be cited."

1 Bacon on Benefit Societies (3d. ed.) §§ 289, 291a.

"By the terms of such contracts" [those of fraternal beneficiary corporations] "the beneficiary may be changed by the mere will of the member, and without the beneficiary's consent. In such case the right of the beneficiary is not property but a mere expectancy, dependent on the will of the member to whom the certificate is issued. For this reason the beneficiary's interest in the certificate and contract evidenced thereby differs totally from the interest of a beneficiary named in an ordinary life insurance policy, containing no provision for the designation of a new beneficiary."

Golden Star Fraternity v. *Martin*, 59 N. J. L. 207.

"In an ordinary life insurance policy made payable to a person named, the rights of the beneficiary are fixed by the terms of the policy, and are vested when the policy is issued. In the certificate of a beneficiary association which is issued to a holder, and which authorizes him to designate another beneficiary than the one originally named, the holder may make such changes as the law of the association permits, within the limits of those classes for whom, by statute, such association may provide. All that a beneficiary has during the lifetime of the member who holds the certificate is a mere expectancy, which gives no vested right in the anticipated benefit, and is not property, as, owing to his right of revocation, it is dependent on the will and pleasure of the holder. *Richmond* v. *Johnson*, 28 Minn. 447."

Marsh v. *American Legion of Honor*, 149 Mass. 512, 515.

The same distinction is seen in the fact that the interest of the beneficiary is *exempt from attachment*, while the payee of an insurance policy has no such exemption.

> "That, if the benefit certificate is to be treated as an ordinary life insurance policy, the amount due would become liable for her debts on the decease of her husband may be conceded. *Norris* v. *Massachusetts Ins. Co.*, 131 Mass. 294. *Troy* v. *Sargent*, 132 Mass. 408, 409.
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> ". . . In view of the object of these beneficiary corporations, of the limited number of persons for whose benefit they are intended, of the fact that the member of the corporation cannot provide for his creditors by a benefit certificate, or dispose of the fund by testamentary bequest, we cannot doubt that the fund due on the certificate is not subject to attachment while it remains in the hands of the corporation."

Saunders v. *Robinson*, 144 Mass. 306, 309.
Burdon v. *Mass. Safety Fund Assn.*, 147 Mass. 360, 367.
Palmer v. *Northern Mut. Relief Assn.*, 175 Mass. 396, 398.

3. These characteristics have been recognized by the legislatures of the several states as constituting a distinct and peculiar form of organization, for which a separate distinctive, but substantially uniform code has been enacted in almost every state of the Union.

(*a*) THE FRATERNAL MOVEMENT IS OF MODERN ORIGIN.

The peculiar features set out above represent an almost local and characteristically American form of development.

Several learned writers have sought to find the beginnings of this movement in the fraternities of Greece or Rome or the mediæval gilds, *e. g.:*

Sir Edward W. Brabrook, 11 Encyc. Britannica (11th ed.), 217.
1 Bacon on Benefit Societies (2d ed.), §§ 1a, 5, 6.
C. H. Robinson History of Fraternal Societies.

As a practical matter, the great fraternal movement of the United States had a wholly independent and very modern origin. Even the early American fraternities (*e. g.*, Order of Red Men, founded in 1771; Ancient Order of Foresters, 1836; Ancient Order of Hibernians of America, 1836; Independent Order of B'nai B'rith, 1843; Order of the United American Mechanics, 1845) had an almost negligible influence on the great system which is before the Court in this case, and whose characteristic features have just been described.

This system had its practical beginning in this country about 1867 at Meadville, Pennsylvania, in an organization (which excluded from membership "saloonkeepers and lawyers") providing for a contribution of a dollar from each member, irrespective of age, on the happening of a death. This arrangement, at first almost wholly informal, speedily became very popular, and, as the "Ancient Order of United Workmen," spread all over Pennsylvania.

Further experience showed that a medical examination was advisable, and that more careful and more definite forms of organization must be adopted. Later, the members decided to incorporate, and from this start, proceeding with absolute honesty and rigid economy, but without any real leadership, careless and often contemptuous of scientific advice, learning only in the hard school of experience, the movement has now developed

into a great system of its own, until, as already suggested, more than a quarter of the people of the United States are dependent upon it for the protection of their homes. Its history justifies the observation of Hon. Carrol D. Wright that "since about the year 1870 a new form of benefit organization has come into existence."

11 Encyc. Britannica (11th ed.), 222.

(*b*) THIS SYSTEM IS REGULATED BY A CODE OF ITS OWN IN PRACTICALLY EVERY STATE OF THE UNION AND THE PROVINCES OF CANADA.

This great development has left its marks in the legislative history of every state of the Union. Beginning with occasional enactments which dealt with specific or detached incidents, the legislatures of one state after another have enacted fairly complete codes recognizing the fraternal beneficiary corporation as a definite and peculiar form of organization, with rules of its own, which these various legislatures, after all due consideration, have adopted as the law of their several states.

These legislative enactments are intelligible only when viewed in the light of the history which has produced them. They represent— to use what has been described as a slang phrase— "a great social evolution," but the substantial unanimity with which this movement has been recognized by the statutory law of the various states shows that it is well established, past any possibility of question, as a unique, distinctive institution with an individuality of its own.

The magnitude and importance of this huge volume of legislation cannot easily be explained to anyone who is not familiar with it. Owing, perhaps, to the comparatively small amount represented by each of these individual contracts, this Court has had little, if any,

occasion heretofore to examine it. We have collected in the margin simply as illustrative the references to this legislation in a single typical state, Massachusetts, under the laws of which the plaintiff in error is incorporated.

St. 1874, c. 375, §§ 1–9, inclusive.— Purposes defined, by-laws authorized, and property permitted up to $500,000.

St. 1875, c. 49.— Certain officers to have powers of Directors.

St. 1875, c. 107, §§ 1, 2, as follows:

"SECTION 1. The provisions of the general laws relating to life insurance companies shall not be held to be applicable to such associations established under the laws of this Commonwealth for any of the purposes set forth in section two of chapter three hundred and seventy-five of the acts of the year one thousand eight hundred and seventy-four as may make provision for the widows, orphans or other dependents of deceased members and of other persons, by means of a fixed payment to be made on the death of each person for the benefit of whose dependents such provision is made.

"SECT. 2. Nothing contained in this act shall be construed to authorize the formation of associations for the sole or principal purpose of insuring lives."

St. 1877, c. 204.— Funds exempted from trustee process, and further provision that the general laws relating to life insurance companies shall not be held to be applicable to such beneficiary corporations.

St. 1880, c. 196, §§ 1–4.— Annual reports required and advance assessments authorized.

Pub. St. (1882), c. 106, §§ 18, 20, 21.— Modification of form of organization.

Pub. St. (1882), c. 115, §§ 1–13.— First codification of the law with slight amendments.

St. 1882, c. 195.— Extension of exemption of funds from attachment, modification of requirements as to annual report.

St. 1888, c. 429, §§ 1–22.— Second codification of the law, providing for the admission of foreign fraternal beneficiary corporations to Massachusetts, prescribing criminal penalties for certain unauthorized acts, and providing for reincorporation of societies previously organized.

St. 1890, c. 341.— Further restrictions and limitations upon the use of the funds.

St. 1890, c. 400.— Disability funds authorized.

St. 1891, c. 163.— Benefits to living members authorized in certain cases.

St. 1892, c. 40.— Admission of foreign fraternal beneficiary organizations regulated.

St. 1892, c. 435.— Receivership proceedings authorized in certain cases.

St. 1893, c. 47.— Limitation of membership in certain cases.

St. 1893, c. 321.— Limitation of foreign fraternal beneficiary organizations.

St. 1893, c. 418.— Fraternal beneficiary corporations forbidden to do endowment business.

St. 1894, c. 60 and c. 328.— Limitation of beneficiaries.

St. 1894, c. 367, §§ 1–21, inclusive.— Third codification of law with many minor changes.

St. 1895, c. 104.— Change of name of fraternal beneficiary corporation.

St. 1895, c. 281.— Misrepresentations by members.

(*c*) THESE CODES, WITH PRACTICAL UNIFORMITY, DECLARE THAT THE SYSTEM CREATED BY THEM IS DISTINCT FROM ORDINARY LIFE INSURANCE.

(1) *The statutes of New York have always recognized this distinction.*

The first mutual benefit associations in New York apparently carried on their work under L. 1875, c. 267,

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St. 1895, c. 340.— Provision for closing the affairs of certain fraternal beneficiary corporations.
St. 1896, c. 102.— Acceptance of certain statutory provisions by existing orders.
St. 1896, c. 136.— Distinction between certain charitable organizations and fraternal beneficiary corporations.
St. 1897, c. 228.— Enlarging class of beneficiaries.
St. 1898, c. 474, §§ 1–24, inclusive.— Recodification of law, including many amendments.
St. 1899, c. 442, §§ 1–29, inclusive.— Recodification of the law, including several new amendments.
St. 1900, c. 185.— Admission of foreign beneficiary corporations.
St. 1901, c. 275.— Enlarging class of beneficiaries.
St. 1901, c. 422, §§ 1–30, inclusive.— Recodification of the law with changes.
St. 1901, c. 487.— Enlarging class of beneficiaries.
Rev. Laws (1902), c. 110, §§ 15–20.— Form of corporate organization prescribed.
Rev. Laws (1902), c. 119, §§ 1–22.— Recodification of existing law.
Rev. Laws (1902), c. 125, § 6.— Powers of certain officers.
St. 1903, c. 332.— Provision for filing by-laws, etc.
St. 1904, c. 155.— Provision for fraternal beneficiary corporations to become an assessment company.
St. 1904, c. 271.— Funeral benefit authorized in certain cases.
St. 1905, c. 315.— Use of names limited.
St. 1907, c. 471.— Distinguished from accident companies.
St. 1907, c. 472.— Limitation extended to include clergy.
St. 1907, c. 576, § 35.— May engage in certain forms of sickness insurance.
St. 1908, c. 463.— Merger of different corporations permitted.
St. 1909, c. 278.— May loan to members without license.
St. 1909, c. 294.— May become an assessment insurance company.
St. 1909, c. 407.— May form subsidiary orders among existing membership.
St. 1910, c. 98.— Foreign fraternal beneficiary corporations, subject to domestic injunction.
St. 1910, c. 296.— Authorized to employ paid agents in certain cases.
St. 1910, c. 339.— Certain privileges limited to domestic fraternal beneficiary corporations.
St. 1910, c. 649.— Investment of emergency fund in mortgages limited.
St. 1911, c. 111.— Certain benefits may be paid by subordinate lodges.
St. 1911, c. 628, §§ 1–34, inclusive.— Recodification of the law with numerous changes.
St. 1912, c. 82.— Injunctions to be allowed only on suit by Attorney-General.
St. 1913, c. 411.— May provide medical attendance for members and families.
St. 1913, c. 617.— Class of beneficiaries enlarged.

but the earliest act expressly dealing with this subject is chapter 256 of the Laws of 1881, entitled "An Act concerning charitable, benevolent and beneficiary associations, societies and corporations." This act required reports to be made by such corporations to the insurance department of the state, but expressly separated them from insurance companies in every other respect.

See, also, to same effect:

L. 1889, c. 520, §§ 6, 15, 16.
L. 1892, c. 690 (Insurance Law), §§ 233, 239.
3 Consolidated Laws, 1842, 1846.

The present provision is as follows:

> "Except as herein otherwise provided, such societies shall be governed by this article, and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no addition thereto hereafter enacted shall apply to them unless they be expressly designated therein."

L. 1911, c. 198, § 4.

(2) *Substantially the same distinctions are made by the statutes of practically every state in the Union.*

We collect the references in the margin of this and the pages following.

"Any corporation, society, order or voluntary association without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with a ritualistic form of work and representative form of government, and which may make provision for the payment of death benefits, is hereby declared to be a fraternal beneficiary association. . . .

"Except as herein provided, such associations shall be governed by this act, and shall be exempt from all provision of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose, and no law hereafter passed shall apply to them, unless they be expressly designated therein."

Alabama, General Acts of 1911, p. 700, §§ 1, 4. Fraternal society exempt from general insurance act. Code (1907), c. 99, § 4562. (Act of March 4, 1901, p. 180.) Also exempt from act relating to mutual insurance companies. Code (1907), c. 99, § 4605. (Act of Feb. 20, 1899, p. 100, § 5.)

Congress has also adopted similar provisions in its legislation for the districts under its control. We quote two examples:

> "A fraternal beneficial association is hereby declared to be a corporation, society, order or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, having a lodge

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See in substantially identical terms:

Arizona, Revised Statutes (1913), Title 24, § 3474.

California, Henning's General Laws (1914), c. 49, Act 440, § 4. See, also, Kerr's Civil Code (1905), § 451; Act of April 7, 1878, Code Amdts. 1877–78, p. 82; Act of March 23, 1885, Stat. and Amdts, 1885, p. 25.

Colorado, 1 Mills. Stats. (1912), c. 65, § 3023. (L. 1911, p. 423, § 4.)

Idaho, Session Laws 1911, c. 225, § 4. See, also, Revised Codes (1909), § 2889; Session Laws 1901, p. 165, c. 3, § 1.

Louisiana, Acts of 1912, No. 256, § 4; Acts of 1906, p. 182, No. 115, § 4.

Maryland, Laws 1912, c. 824, § 4A; L. 1894, c. 295, § 143E; Public General Laws (1904), Art. 23, § 210.

Michigan, Public Acts 1913, No. 169, § 4. See 4 Howell's Stats. § 9022; Acts 1895, No. 150, § 1.

Minnesota, General Stats. (1913), § 3540; St. 1907, c. 345, § 4.

Missouri, Laws 1911, p. 285, § 5.

Montana, Session Laws 1911, c. 140, § 4.

New Hampshire, St. 1913, c. 122, § 4.

New York, Laws 1911, c. 198, § 2, amending Consolidated Laws, c. 28, § 230, clause 4 (cited *supra*).

Ohio, Laws 1911, p. 534, § 1; General Code (1910), § 9465; L. 1897, p. 422, § 4.

Oregon, General Laws 1911, c. 217, § 4; Lord's Laws (1910), §§ 4634, 4659; L. 1887, p. 123, § 18; L. 1889, p. 66, § 3580.

Rhode Island, Public Laws, 1914, c. 803, § 4.

Tennessee, Acts of 1905, c. 480, § 4.

Texas, General Laws 1913, c. 113, § 4; Revised Civil Statutes (1911), Article 4830.

Utah, Laws of 1911, c. 148, § 4.

Wyoming, Session Laws 1913, c. 127, § 4.

"Every incorporated association, order or society, doing business in this State on the lodge system, with ritualistic form of work and representative form of government, for the purpose of making provision for the payment of benefits in case of death, is hereby declared to be a 'fraternal beneficiary order, society or association.' . . . Such orders, societies or associations shall be governed by this Act, and shall be exempt from the provisions of all insurance laws of this State, and no law hereafter passed shall apply to said societies, orders or associations, unless it be expressly designated therein."

Arkansas, Kirby's Statutes (1904), §§ 4351, 4352; Act of May 8, 1899.

"Except as herein provided, such societies" [Fraternal Benefit Societies] "shall be exempt from all provisions of the insurance laws."

Connecticut, Public Acts, 1913, c. 185, § 4; General Statutes (1902), § 3582; Public Acts 1895, c. 255, § 1.

system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. . . . Such association shall be governed by this subchapter, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein."

District of Columbia Code (1911), § 749.

"Such orders or associations shall be governed by this Act, and shall be exempt from the provisions of the insurance laws of this State, and no law hereafter passed shall apply to a fraternal beneficiary order or association, unless it is expressly designated therein."

Georgia, Code (1910), § 2869; Act of Dec. 17, 1900, § 1.

See, for substantially identical provisions:

Illinois, 4 Jones & Addington's Illinois Statutes, § 6646; L. 1893, p. 130, § 1; L. 1901, p. 222, § 1.

Indiana, Acts of 1899, p. 177 (Amended Acts 1907), p. 388; 2 Burns' Indiana Statutes (1914), § 5043. See, also, Acts of 1897, p. 318, § 26; 2 Burns' Indiana Statutes (1914), §§ 4764, 4738.

Kansas, General Stats. (1909), § 4303; L. 1898, c. 23, § 1; L. 1899, c. 147, § 1.

Nebraska, Revised Stats. (1913), § 3299.

New Jersey, 1 N. J. Comp. St. (1911), p. 197, § 10; Pub. Laws, 1893, p. 232.

North Dakota, Civil Code (1905), § 4570; L. 1901, c. 90, § 1; L. 1913, c. 191, § 4.

Oklahoma, Compiled Laws, 1909; L. 1901, p. 119, § 1.

Pennsylvania, 1 Purdon's Digest (1903), p. 463, § 11; Act April 6, 1893, § 1, P. L. 7.

South Carolina, Code (1912), § 2768; Act of Feb. 23, 1910, § 29.

Washington, Session Laws (1911) (Insurance Code), c. 49, § 209.

West Virginia, Code (1913), § 3229; Acts 1908, c. 32; Acts 1909, c. 71.

"A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries.

"Such associations shall be governed by this chapter, and shall be exempt from the provisions of the statutes of this State relating to life insurance companies, except as hereinafter provided."

Iowa, Code (1897), §§ 1822, 1825.

"Such associations shall be governed by the last twenty-four sections of this chapter, and shall be exempt from the provisions of insurance laws of this state, except as therein provided, and no law passed after March 21, 1901, shall apply to them unless they be expressly designated therein."

Maine, Revised Statutes (1903), c. 49, § 134.

"The provisions of c. 118" [Insurance Law] "except § 95" [Relating to Receivers] "shall not apply to corporations organized or admitted under and transacting business authorized by the provisions of this chapter."

Massachusetts, Revised Laws, c. 119, § 22 (Record, p. 95). See, also, St. 1911, c. 628, § 4.

"All orders or secret societies, such as Ancient Order of United Workmen, Modern Woodmen of America and other benevolent, fraternal or cooperative societies associated or incorporated for the sole purpose of mutual protection and relief of its members only, and for the payment of stipulated sums of money to the families of deceased members, or for property of its members only destroyed by fire, are hereby declared not to be fire or insurance companies in the sense and meaning of this chapter, and they are exempt from the provisions hereof."

Alaska Compiled Laws (1913), § 791.

4. The courts of the different states have repeatedly recognized the factors above described as creating a contract essentially different from commercial life insurance.

The courts have almost invariably recognized that contracts of the sort here in question are "different" from life insurance policies, although when it comes to stating this difference they have usually contented themselves with pointing out the particular difference which happened to lie on the surface of the facts under consideration. We

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"Nothing in this act" [Insurance Law] "shall be construed to extend to the Masonic or Odd Fellows Association or the Royal Arcanum . . . or other benevolent associations." . . .

North Carolina, Public Laws, 1899, c. 54, § 87. See, also, for changed phraseology, 2 Pell's Revisal (1908), § 4794.

"All such fraternal beneficiary orders . . . shall be governed by this chapter, and shall be exempt from the provisions of section 1271 of the Code relating to securities to be deposited with the treasurer of this State, and shall be exempt from all other laws of this State relating to corporations organized and doing business under the system of life or casualty insurance known as either the old line or legal reserve plan, or the cooperative or assessment plan." . . .

Virginia, Acts of 1906, c. 112, Title V., § 1; 3 Pollard's Supplement to Virginia Code, p. 620, Acts 1897–98, c. 688, § 1.

"Unless express reference is made to this subsection or unless expressly designated therein, no law now in force or hereafter enacted, shall apply to any fraternal benefit society or mutual benefit society."

Wisconsin, Statutes (1911), § 1956, Clause 9.

hope the present case may lead to the formulation of some more general and fundamental principle of distinction.

Almost every case cited in this brief as having to do with fraternal beneficiary Orders may be cited as authority for this statement. In addition to these, merely as typical of a very large number, reference may be had to the following:

Daughtry v. *Knights of Pythias*, 48 La. Ann. 1203.
Union Society v. *Martin*, 23 Ky. L. R. 2276.
Knights of Maccabees v. *Commissioner of Insurance*, 155 Mich. 693.
Commonwealth v. *Beneficial Ass'n*, 137 Pa. St. 412.
Chambers v. *Knights of Maccabees*, 200 Pa. St. 244.
State ex rel. Royal Arcanum v. *Benton*, 35 Neb. 463.
Brenizer v. *Supreme Council Royal Arcanum*, 141 N. C. 409.
Supreme Council v. *Ainsworth*, 71 Ala. 436.
Stohr v. *Musical Fund Society*, 82 Calif. 557.
Kane v. *Knights of Columbus*, 84 Conn. 96.
Grand Lodge A. O. U. W. v. *Burns*, 84 Conn. 356.
Tisch v. *Protected Home Circle*, 72 O. S. 233.

5. It may be noticed in passing, that this contract is also distinct from assessment insurance.

The latter form of insurance is purely commercial, carried on usually for profit, and existing under statutes wholly distinct from those creating fraternal beneficiary corporations.

Compare, for example:

Massachusetts Revised Laws, c. 119, "Of Fraternal Beneficiary Corporation"; and c. 120, "Of Assessment Insurance."

New York, Consolidated Laws of 1909, c. 33, §§ 200–217; "Life Insurance upon the Assessment Plan"; c. 33, §§ 230–241, "Fraternal Beneficiary Societies."

Stocker v. *Boston Mutual Life Association*, 170 Mass. 224.

Nugent v. *Greenfield Life Association*, 172 Mass. 278.

"There are also in this country a number of regular corporations, formed for the conduct of the business of life insurance on the plan of the benefit societies — the collection of frequent periodical assessments as required to meet death losses. The business of these companies is regular life insurance conducted upon a new theory, for, except in this respect, they do not differ from the regular life insurance companies with which all are familiar. These organizations are known as assessment companies, or life insurance companies doing business on the assessment plan and in some states the business is regulated by statute."

1 Bacon on Benefit Societies (3d ed.), §13, p. 21.

With possibly four exceptions, every state in the Union forbids the creation of any fraternal beneficiary corporation "*which does not provide for stated periodical contributions sufficient to meet the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August twenty-three, eighteen hundred and ninety-nine, or any higher standard, with interest assumption not more than four per cent per annum.*"

As pointed out later in this brief (p. 124), twenty-eight states have prescribed conformity to this standard for all existing fraternal beneficiary corporations, so that the financial side of these organizations has nothing in com-

mon with the "current cost" hit-or-miss system of the so-called assessment companies. Indeed the contrast between "change of rates" in one of these companies and the careful, thoroughgoing readjustment in this case, as disclosed by the findings of the trial court set out in the Record, is in itself sufficient to show the wide difference between the two forms of organization.

Many "associations," "societies," "leagues" and "circles" incorporated as assessment companies have been very properly held to be engaged in the "insurance business," and decisions dealing with such cases are sometimes carelessly cited by text writers as applying to fraternal beneficiary corporations, *e. g.:*

Com. v. *Weatherbee,* 105 Mass. 149.

We have no quarrel with such decisions when applied to the facts upon which they are based, but it should be noted that they have no application to the present case.

The fraternal contract, like the life insurance policy, aims in part at relieving the financial loss caused by death. The death payment, however, is only a small part of the former of these two forms of effort, and the primary, indeed sole, purpose of the latter. Even in their efforts to meet this calamity, they use radically different methods. The readiness of the popular mind to regard these two forms of organization as identical justifies a careful refutation of this erroneous conception. Having shown in a negative way that the contract in question is not an insurance policy, we come to consider what it really is.

II.

THE CONTRACT HERE IN ISSUE IS ESSENTIALLY ONE OF CORPORATE MEMBERSHIP, INVOLVING AMONG OTHER THINGS A "MEMBERSHIP BENEFIT" CLOSELY RESEMBLING LIFE INSURANCE BUT LEGALLY DIFFERENT FROM IT.

In other words, the contract is exactly what it purports to be on its face. It is an application for membership, a certificate of membership, and a series of statutes and rules regulating membership rights and duties. Whatever benefits come are membership benefits. The obligations resulting therefrom are membership obligations. *The plaintiff did not "take out a policy"; he "joined the Order."*

1. This plain language and emphasis upon the membership relations in every part of the contract is decisive of its legal meaning and effect.

In dealing with written instruments of this kind, it is well to recall the fundamental rules of construction, that the *whole* contract is to be considered, together with the situation of the parties at the time it was made, and that presumably the several parts of it mean simply just what they say.

> "But the question presented involves not the interpretation of this language apart from the whole agreement, but is, on the contrary, the ascertainment of the meaning of the entire contract. . . . The elementary canon of interpretation is, not that particular words may be isolatedly considered, but that the whole contract must be brought into view and interpreted with reference to the nature of the obligations between the parties, and the intention which

they have manifested in forming them. *Boardman* v. *Reed*, 6 Pet. 328; *Canal Co.* v. *Hill*, 15 Wall, 94."

O'Brien v. *Miller*, 168 U. S. 287, 297.

"All agree that as a general rule in the interpretation of written instruments the intention of the parties must control, and that such intention is to be gathered from the words used, the words being interpreted, not literally nor loosely but according to their ordinary signification. If the words be clear and explicit, leaving no room to doubt what the parties intended, they must be interpreted according to their natural signification. If the words are ambiguous, then resort may be had to such evidence, written or oral, as will disclose the circumstances attending the execution of an instrument, and place the Court in a situation in which the parties stood when they signed the writing to be interpreted."

U. S. v. *Choctaw Nation*, 179 U. S. 494, 531.

"We should look carefully to the substance of an original agreement, as distinguished from its mere form, in order that we may give it a fair and just construction and ascertain the substantial intent of the parties, which is the fundamental rule in the construction of all agreements. . . . And in making this inquiry we have a right to examine into the state of things existing at the time and the circumstances under which the lease was made. . . . The contract was made in reference to the state of things existing at the time it was made."

Canal Co. v. *Hill*, 15 Wall. 94, 100, 101.

"There can be no doubt whatever of the general proposition that in the interpretation of any particular clause of a contract, the Court is not only at liberty, but required, to examine the entire contract and may also consider the relation of the parties, their

connection with the subject-matter of the contract, and the circumstances under which it was signed."

Rock Island Railway v. *Rio Grande Railroad*, 143 U. S. 596, 609.

The application of these ordinary rules of construction to the contract in question are conclusive of the point which the defendant desires to make,— namely, that this contract is fundamental and essentially one of corporate membership.

2. The practical construction which the parties by their acts have placed upon this contract also shows that it has always been treated as one of membership.

(*a*) What the Parties have Actually Done Under a Contract is a Good Indication of the True Meaning of the Instrument.

"The practical interpretation of an agreement by a party to it is always a consideration of great weight. The construction of a contract is as much a part of it as anything else.

"There is no surer way to find out what the parties meant than to see what they have done."

Insurance Co. v. *Dutcher*, 95 U. S. 269, 273.

"The practical construction put upon a contract by the parties to it is sometimes almost conclusive as to its meaning."

Nicoll v. *Sands*, 131 N. Y. 19, 24.

"What adds great weight to this view is it accords with the practical construction given to the contract

by both parties. . . . In cases where the language used by the parties to the contract is indefinite or ambiguous, and, hence, of doubtful construction, the practical interpretation by the parties themselves is entitled to great, if not controlling, influence. . . . But, in an executory contract, and where its execution necessarily involves a practical construction, if the minds of both parties concur, there can be no great danger in the adoption of it by the Court as the true one."

Chicago v. *Sheldon*, 9 Wall, 50, 54.

See, also, to same effect:

Topliff v. *Topliff*, 122 U. S. 121, 131.
Sowber v. *Bangs*, 2 Wall, 728, 737.
Dist. of Columbia v. *Gallagher*, 124 U. S. 505–510.
Steenbach v. *Stewart*, 11 Wall. 567, 576.
Chicago & G. W. Ry. Co. v. *Northern Pac. R. Co.* (*C. C. A.*), 101 Fed. Rep. 792.
Jennings v. *Machine Co.*, 138 Mass. 594.
Attorney-General v. *Drummond*, 1 Dr. & War. 353, 368; affirmed in *Drummond* v. *Attorney-General*, 2 H. L. Cas. 837.
17 Am. & Eng. Encyc. Law (2d. ed.), 23.

(*b*) The General Course of Dealing under Contracts of this Kind is Inconsistent with the Fixedness Implied in an Ordinary Contract of Insurance, and Accords with the Relations Growing Out of Corporate Membership.

Such societies deal only with their own members. They have no capital stock, are not conducted for profit, but for the promotion of benevolence, charity, mental improvement, care for the sick and needy, and to provide a beneficiary fund payable at his death, as the member may direct, to a relative or dependent. A contract of bene-

ficiary membership is a contract of each incoming member with every existing member, and prospectively with every new member that shall come in thereafter, by which they stipulate that they all enter upon a common, continuing enterprise of mutual benefit and equal obligation.

When Mr. Green joined the Order it had been in existence only six years. Fraternal benefit societies were then untried experiments. The purposes and objects of the Order were known, and the form and language of the contract show that it was obvious to all that future experience would demand additional burdens. Under such circumstances, what did the plaintiff say when he made application for membership? This:

"I will unite with all those who are now members, and those who come in hereafter, to carry out the mission of this mutual cooperative enterprise to provide and maintain a fund for the payment of death benefits.

"I realize that, if my expectations are fulfilled, and my beneficiary receives the benefit payable at my death, then the members must pay in to the benefit fund an amount sufficient to meet all mortuary obligations as they mature. There is no capital stock, and the Order can only pay out to beneficiaries what we, the members, pay in.

"The time may come when the amount which I shall be required to pay will be larger than at present. Probably it will, because my assessment for a $3,000 certificate is only $1.86, and last year there were only nine assessments levied (Record, p. 90), so it would have cost me only $16.74 a year for protection to the extent of $3,000 at age thirty-seven.

"This society I am joining is a representative organization. We legislate for ourselves. If future exigencies demand modification of present law, or the enactment of new ones, to carry out our scheme of equality of burdens and mutuality of benefits, we have the power to so legislate.

"I recognize that, as time goes on, it may be necessary

to make changes in the laws relating to assessments by which the Widows and Orphans' Benefit Fund is created and maintained. We must have the power to change such laws if the conditions require it, or else our expectations will not be realized, the benefits will not be paid, and the object of this mutual union will be defeated.

"I realize that my protection may become forfeited if I am guilty of any conduct unbecoming to my profession as a member of this fraternal Order, or if I am guilty of any offence, either a felony or misdemeanor, which renders me sociably unacceptable to my fellow members. I realize that in joining this Order I assume many obligations in addition to the simple payment of my assessments, and that failure to conform to any of these duties, or requirements, as now existing or hereafter adopted by my brethren, may result in my expulsion from membership and the loss of all my rights in the Order.

"I further recognize that, as the society can only be governed by the laws made by the members, and as my contract is a unilateral one, I have the right to retire at any time, should I become dissatisfied with the laws enacted by the majority of my brethren, and I shall then have had my promised protection during the period of my membership."

Such is the real contract from the standpoint of every incoming member at every stage of the Order's existence. It clearly appears that the real essence of the contract, as between the member, upon the one hand, and all persons then members or to become members, on the other hand, is a contract of mutuality of interests between the holder and every other member of the society. This mutuality of interests includes mutuality in the bearing of the burdens and mutuality in receiving the benefits promised.

The bestowal of the benefits promised depends upon the duties performed and the burdens borne by each member of the society from the time that the contract is entered

into up to and including the time when the benefits are to be paid. The overwhelming and dominating features of the contract, in an enterprise of this character, are mutuality and equality. It necessarily follows, therefore, that the members must contemplate a submission to such reasonable changes as are necessary to insure the same, and, as before shown, explicit provision to accomplish that end was made by the language employed in the application for membership and the benefit certificate.

It is apparent that mutuality of duty and equality of rights can only be preserved by the member stipulating to be subject to future as well as existing by-laws. Time and experience will develop the necessity for changes in by-laws, *and, if all the members were not bound by future laws, as well as the laws existing at the time of their entrance, then there would be one class of members bound by the changed laws and another class exempt from their operation. This is contrary to the essential nature of a fraternal beneficiary corporation.*

1 Bacon, Benefit Societies (3d ed.), § 85.

(*c*) THE COURSE OF DEALING SHOWN IN THE RECORD BEFORE THE COURT IS INCONSISTENT WITH A CONTRACT OF ORDINARY INSURANCE, AND SHOWS THAT THE CONTRACT IS ONE OF CORPORATE MEMBERSHIP.

The record shows a clear reservation, in every part of the contract, of the right to make subsequent changes from time to time as the majority may think best to meet the vicissitudes of the common venture. See pages 17–19 of this brief, *supra*.

The record also shows how under this reserved power of amendment the relation between the Order and its members was radically and substantially changed in 1898,

not only by increasing the amount of the member's assessment, but still more important, by changing the system of post mortem assessments at irregular intervals whereby money was collected only as needed to pay current death claims, to one of regular collections with a substantial "emergency fund." The plaintiff admits these facts, in which he says he "acquiesced." The fact that some 250,000 other members also acquiesced both in 1898, and in 1905, is a good indication of what they understood the contract to be. A comparison of the by-laws set out in the record as existing at the time of the plaintiff's initiation (1883) and in 1905 shows that the whole code has been changed in all its parts, and that the reserved power of amendment has been constantly exercised in connection with every feature of the common enterprise.

3. The legal effect of membership in the Order, as shown in this case, differs in vital respects from membership in a purely mutual life insurance company.

(*a*) In the Mutual Insurance Company the Membership Relation is Largely Replaced by the Separate and Distinct Agreement Contained in the Policy.

Under the ordinary policy issued by the mutual life insurance companies, the person insured becomes a member of the corporation.

In such cases the member has a certain collection of rights and duties arising from the membership relation, but he also has a second and wholly distinct collection of rights and obligations arising from the additional contract embodied in the insurance policy. As a rule, the policy is a hard and fast agreement for a definite amount of insurance at a fixed price, subject to certain reductions depend-

ing on the profits of the business. As regards *that* agreement, the member is practically an external contractor; the questions relating to it are purely questions in the law of insurance.

In such cases, the membership relation and the corporate powers or peculiarities of the organization are so strictly separated from and so subordinate to the formal and more important insurance contract that they have no determining influence upon any phase of the "policy," and may safely be left out of consideration, in the settlement of rights arising under that document.

Practically nothing is left to be settled by the fact of membership. All the matters between the company and the member are settled by this express, definite agreement, in which the company stands on one side as the insurer, and the member on the other side as the insured. The policy holder in such cases is like a man who buys a corporate bond, and at the same time has a share of stock given him. He is, of course, a stockholder as well as the owner of a bond, but his rights as the holder of the bond are wholly distinct from his rights as a stockholder, and are wholly separate and distinct from any powers or obligations which he might have as a member of the corporation. In the case of a mutual insurance company, these expressly stipulated rights, contained in the policy, are practically the only ones which ever come before the courts. In such cases, almost invariably, as recently pointed out by this Court, "it may be true that a person who insures with the company becomes a member thereof and that his interest is fixed at the amount of his insurance. But what constitutes his title or right? Necessarily his policy."

MR. JUSTICE MCKENNA, *in Northwestern Life Ins. Co. v. McCue*, 223 U. S. 234, 249.

This fact has been repeatedly emphasized by the courts in discussing policies issued by strictly mutual companies. The italics in the quotations are our own:

> "Counsel contend that, as the company is a mutual one, the rule applicable to companies of a different character should not apply. We are unable to perceive any reason upon which this position can rest. *The policyholder makes a contract with a corporation, and that contract must govern,* although he is not a stranger in the literal sense, but a member of a corporate body. The corporation is as to him, as it is to all other natural persons, a different and distinct person; and *the contract has,* so far as concerns the question under immediate discussion, *precisely the same force and effect as though made with an entire stranger. . . .* In all contracts of insurance, whether executed by mutual insurance companies, or not, there are two parties with adverse interests, and *the measure of their rights is supplied by their contract.* Its terms cannot be changed, nor its stipulations made nugatory, because the insured is a stockholder and entitled to share in the profits arising from the business of the company. . . . The stipulations of a written contract are none the less binding because made between a corporation and one of its members; nor are the rules of construction in such cases different from those which obtain in contracts between corporations and strangers."
>
> *Willcuts* v. *Northwestern Mut. Life Insurance Co.,* 81 Ind. 300, 307.

> "'It has been held that the holder of a policy of insurance, *even in a mutual company,* was in no sense a partner of the corporation which issued the policy, and that *the relation between the policyholder and the company was one of contract, measured by the terms of the policy.*'"
>
> *Equitable Life Assurance Co.* v. *Brown,* 213 U. S. 25, 48, quoting *Uhlman* v. *N. Y. Life Insurance Co.,* 109 N. Y. 421, 429.

"The company is a body corporate, capable of contracting as such, and *the relation is between insurer — a corporation — and insured* . . . The contract is the contract of the corporation, and whatever incidental advantages appertain to a member, that does not affect the contract in the policy."

Mut. Benefit Life Ins. Co. v. *Hillyard*, 37 N. J. L. 444, 474.

"Too much is attempted to be made of the relation of corporator in which the insured stands, in mutual insurance companies. *In the act of insurance he is not so, but a stranger.*"

Cumberland Valley Mut. Protection Co. v. *Schell*, 29 Pa. 31, 37.

"A member" (of a mutual fire insurance company) "may participate in its benefits, is presumed to know its rules and regulations. . . . His corporate rights may be subject to the control of the corporation, but *his rights as a party insured rest on the contract.*"

Rosenberger & Co. v. *Washington Mutual Fire Ins. Co.*, 87 Pa. St. 207, 212.

"But whatever analogies there may be between mutual companies and ordinary partnerships, and the relation of the members of the two organizations, an incorporated company, although organized upon the mutual principle, is in no proper or legal sense a partnership. The defendant is a body politic and corporate, capable of contracting and of suing and being sued, and *the relation between the plaintiff and the corporation is that of insured and insurer*, and the rights and duties of the contracting parties are *to be governed and determined by the terms of the policy by which the insurance is affected, as in other cases.*

> *Other and incidental rights are secured to the plaintiff as a member of the company,* one of the corporators; but this does not make the members partners as between themselves, or affect the express contract of the corporation."
>
> *Cohen* v. *N. Y. Mut. Life Ins. Co.*, 50 N. Y. 610, 624.

In cases of this sort in mutual insurance companies, where the substantial rights of the parties are determined by express hard and fast agreements, and where membership is only an unimportant incident, it is obviously beside the mark to seek to settle questions arising under the express contract by reference to the incidental fact of membership.

> *Northwestern Life Ins. Co.* v. *McCue, supra.*
> *Mutual Life Ins. Co.* v. *Hill,* 193 U. S. 551.
> *Mutual Life Ins. Co.* v. *Cohen,* 179 U. S. 262.
> *Equitable Life Assur. Co.* v. *Clements,* 140 U. S. 226.

The cases conclusively establish the fact that the rights of the insured in a mutual life insurance company are to be determined by the law of the state where the contract is entered into.

It is equally well established that the duties of the member as the insurer depend upon the law of the state of the domicile of the corporation.

See, also, pages 62, 63 of this brief, *infra.*

(*b*) Even in Dealing With Commercial Insurance Contracts, the Courts Have Invariably Given Full Effect to the Membership Relation in Regard to Circumstances Controlled by it.

We quote only a few illustrations. Thus the fact that a member of a fire insurance company has surrendered

his policy would not necessarily free him from an assessment which became due on account of his membership:

> "The solution . . . is to be found in the peculiar nature of the contract of mutual insurance — or rather the contracts; because it is two-fold, corresponding to the two-fold relation which subsists between members of a mutual insurance company, or between each member and the whole body of members constituting the corporation. Each member is, at the same time, insurer and insured. In one respect he is a mere holder of a policy, containing a contract of indemnity against loss by fire, with a specific and limited fund out of which that indemnity is to be made good. . . .
>
> "In another aspect he is a member of the corporation, made so by the very nature of the contract, and so declared by law. Gen. Sts., c. 58, § 43; St. 1872, c. 230. In this relation, he is an insurer, and is affected by another and very different class of obligations. As a member, his rights and liabilities are defined partly by the contract contained in the policy, partly by the statutes, and partly by the by-laws of the corporation.
>
> "The Statute of 1864, c. 196, is applicable to his contract in the former aspect, and not in the latter. It affects the determination of his right of action, in case of loss; of the validity and amount of his claim, under the contract of indemnity with him as a party insured. But it has no reference to the relation of membership, which results from the fact of accepting a policy in such a company, nor to the obligations on his part not affecting his right of recovery."

Commonwealth v. *Mass. Ins. Co.*, 112 Mass. 116, 120.

> ". . . . dealings with the property by the assured, which might defeat his right of recovery upon the policy as a contract of indemnity, would not neces-

sarily terminate his relation of membership and consequent liability to assessment. . . .

Cummings v. *Sawyer*, 117 Mass. 30, 33, 34.

"The policy holders were stockholders *sub modo*. Every person who took insurance in the company was not only subject to this contingent liability, but had the right to look to it as a source of indemnity if he suffered a loss. 'He became at once insurer and insured.' . . . A member does not escape his contingent liability by failure to give a deposit note."

Swing v. *Karges Furniture Co.*, 123 Mo. App. 367, 382, 392.

See, also,

Carlton v. *Southern Mutual Insurance Co.*, 72 Ga. 371.
Rundle v. *Kennan*, 79 Wisc. 492.
Burmood v. *Insurance Co.*, 42 Neb. 598.
Warner v. *Delbridge & Cameron Co.*, 110 Mich. 590, 34 L. R. A., 701.
Mutual Fire Ins. Co. v. *Phœnix Furniture Co.*, 108 Mich. 170 34 L. R. A. 694. (See below, p. 117 of this brief.)

(*c*) THE RESERVATION OF THE POWER OF AMENDMENT IN CONTRACTS SIMILAR TO THE ONE HERE IN QUESTION MAKES THE MEMBERSHIP RELATION THE CONTROLLING AND DOMINANT FACTOR IN EVERY PHASE OF THE CONNECTION BETWEEN THE CORPORATION AND THE MEMBER, AND SHARPLY DIFFERENTIATES THE CONTRACT FROM ALL OTHERS WHICH LACK THIS FEATURE.

In other words, this reserved power of amendment, so carefully emphasized in every part of this fourfold membership contract, deprives the relation between the member and the corporation of the fixedness and certainty which

is usually implied in the word "contract." By this reservation, the prospective member surrenders any hard and fast individual rights he might otherwise have in respect to the subject-matter of the common enterprise in return for a share in the law-making power of the organization.

Under this reserved power of amendment, an inquiry as to what is lawful between the member and the corporation raises a question of corporate power, rather than of technical contract. The relationship is like that between an ordinary commercial corporation and its stockholders, The rights of the member depend upon the nature and powers of the corporation. Under a contract of this character which provides for subsequent amendments, the limitations of that power are found in the general scope of the corporate undertaking. In such a case an act within the power of the corporation cannot be a violation of the contract, for the contract itself expressly provides for all subsequent acts within that limit, or, stated conversely, *the contract is one which contracts for its own modification.*

4. The courts have clearly recognized the decisive and controlling effect of the membership relation in contracts of this kind, where there is a reserved power of amendment.

The judicial recognition of this factor has taken two forms. Several courts of commanding authority have discussed and stated the effect of corporate membership in cases of this kind. Other courts have applied the rule in the clearest manner in decisions made by them, but without any very clear statements of the principle which they appear to have followed almost instinctively.

A careful examination of the authorities shows several hundred reported decisions on the extent of this reserved

power of amendment, most of them decided within the last twenty-five years, and a hopeless conflict and confusion in the reasoning and avowed grounds of decision. The opinions abound in general language of every sort, affirmations and denials of vested rights, reasonableness, rights of majorities and protection of minorities, but the power of amendment is usually treated in abstract terms, with comparatively little discrimination as to the particular exercise of the power in question,— whether the amendment relates to a change in business methods, rates of assessment, forfeiture of benefits in case of suicide, proscribing certain occupations, regulating choice of beneficiaries, or some other subject. Little is gained by discussing the language of the opinions as to the general extent of these powers, because every general affirmation of one case can be met by an equally vigorous general denial in another.

The real root of the matter seems to lie in the general distinction between *contract rights* and *membership duties*. The same distinction is sometimes stated as existing between *rights belonging to the member as the insured*, and *duties owed by the member as the insurer*. The actual *decisions* in nearly all the cases are consistent with the rule that rights created by an express contract, which the member holds as the party insured, cannot be cut down by subsequent by-laws, while duties owed by him as the insurer, or as a member of the promisor corporation, remain subject to subsequent modification under the reserved power of amendment. *Every one of these numerous decisions affirming the right of the majority to modify the methods or scope of the original undertaking is a recognition not only of the force and effect to be given to the membership relation, but also a recognition of the fact that in the particular aspect under consideration the contract involved in each instance is fundamentally one of corporate membership.*

Two of the clearest and most accurate discussions of the subject have been furnished by this court:

Korn v. *Mutual Assurance Society*, 6 Cranch, 192.
Wright v. *Minnesota Mutual Life Ins. Co.*, 193 U. S. 657.

Both these cases are referred to more fully later in this brief. (See pages 63, 67.) They are in themselves sufficient authority for all our contentions in regard to this part of the case.

We quote, however, several additional statements. The italics here and in all subsequent quotations are our own.

"A policy holder in a mutual insurance association stands in a twofold relation toward the company. . . . *He is alike insurer and insured*, but in both capacities he is a member, and it is solely because he is a member that he occupies either of these positions. *His liabilities as insurer and his rights as insured depend wholly upon the obligations and conditions of his membership.*"

Condon v. *Mutual Reserve Fund Life Assn.*, 89 Md. 99, 114.

"The principle which lies at the foundation of mutual insurance, and gives it its name, is mutuality, . . . Each person insured becomes a member of the body corporate, *clothed with the rights and subject to the liabilities of a stockholder.* He is at once insurer and insured. . . . Although the members of a mutual company are not usually denominated stockholders, and are not stockholders in the usual sense of the word, yet they are in point of fact stockholders, . . ."

2 May on Insurance (4th ed.), §§ 548, 549.

"An ordinary life insurance policy contains the whole contract of insurance; but the certificate of

membership in a mutual society is only part of the written evidence of the contract. . . . *In such cases membership in the society carries with it a specified amount of life insurance.*"

Niblack, Mutual Benefit Societies, § 136, and cases cited.

"Where, as in this case, the complainant is a member of an association, formed for the purpose of transacting the business of life insurance upon the cooperative or assessment plan, he is to be regarded *as an integral part of the corporation. His position is similar to that of a corporator in a corporation. . . .*"

Swan v. *Mutual Reserve Fund Life Assn.*, 155 N. Y. 9, 17.

"The liabilities of a member of a company organized under this act are fully as great as those of a stockholder in an ordinary stock corporation. It is immaterial whether the members of this body corporate be designated as members or stockholders, because during the term that their policy of insurance covers they are as essentially members of a corporate body as owners of stock in a stock corporation are of such a corporation . . . *the policy holders are, in their relation to the corporation and in respect to their liabilities thereto, virtually stockholders.*"

McCall v. *Bowen*, 91 Neb. 241, 135 N. W. 1014.

The distinction between rights resting on express contract, which cannot be modified, and duties depending on membership which can be modified, is well illustrated by two sharply contrasted lines of decisions. It will be noted that each of these lists contains several cases from the same jurisdiction.

(*a*) THE AMOUNT PROMISED ON THE FACE OF THE CERTIFICATE CANNOT BE REDUCED UNDER A RESERVED POWER OF AMENDMENT.

Newhall v. *American Legion of Honor*, 181 Mass. 111.
Attorney General v. *American Legion of Honor*, 196 Mass. 151, 161 (distinguishing *Reynolds* v. *Supreme Council Royal Arcanum*, 192 Mass. 150).
Porter v. *American Legion of Honor*, 183 Mass. 326.
Pockrefky v. *Detroit Firemen's Fund*, 121 Mich. 456.
Wineland v. *Knights of Maccabees*, 148 Mich. 608.
Gaut v. *American Legion of Honor*, 107 Tenn. 603.
Makeley v. *American Legion of Honor*, 133 N. C. 367.
Russ v. *American Legion of Honor*, 110 La. Ann. 588.
Wuerfler v. *Grand Grove Druids*, 116 Wisc. 19.
Supreme Council v. *Gordon*, 117 Ga. 808.
Hale v. *Equitable Aid Union*, 168 Pa. St. 377.
Becker v. *Berlin Ben. Assn.*, 144 Pa. St. 232.

(*b*) PROVISIONS RELATING TO ASSESSMENTS MAY BE CHANGED UNDER A RESERVED POWER OF AMENDMENT.

Messer v. *Grand Lodge A. O. U. W.*, 180 Mass. 321.
Reynolds v. *Supreme Council Royal Arcanum*, 192 Mass. 150, 7 L. R. A. (N. S.) 1154.
Wineland v. *Knights of Maccabees*, 148 Mich. 608.
Williams v. *Catholic Mut. Ben. Assn.*, 152 Mich. 1.
Conner v. *Golden Cross*, 117 Tenn. 549.
Green v. *Hartford Life Ins. Co.*, 139 N. C. 309.
Barbot v. *Mutual Reserve Fund Assn.*, 100 Ga. 681.
Supreme Lodge K. of P. v. *Knight*, 117 Ind. 489.
Fullenwider v. *Supreme Council*, 180 Ill. 621.
Miller v. *Nat. Council*, 69 Kan. 234.
Mut. Reserve Life Assn. v. *Taylor*, 99 Va. 208.

Bartram v. *Supreme Council Royal Arcanum*, 6 Ontario W. R. 404.
Shepperd v. *Bankers Union*, 77 Neb. 85.
Haydel v. *Mutual Reserve Fund*, 104 Fed. (C. C. A.) 718.

No effort has been made to make either list exhaustive, but they show in a general way the two extremes on which substantially all well considered opinions agree.

There can be no doubt as to where the present case falls in this classification. The only question in it is as to the right to amend the assessment rate. It is most clearly a question affecting the duties owed by the defendant in error as a member of the Order. It is not a matter to be settled by the law of insurance, but by the law relating to corporate membership.

5. This Court has recently considered the effect to be given to membership in a benevolent corporation.

This Court has recently given careful attention to a case involving an interesting application of the effect to be given to membership in a benevolent corporation.

St. Benedict Order v. *Steinhauser*, 234 U. S. 640.

In that case, the Court, speaking by MR. JUSTICE HUGHES, pointed out that the question was "solely one of civil rights" depending "upon the constitution of the complainant corporation, and the obligations inherent in membership."

This corporation, organized under the laws of New Jersey, provided in its by-laws (called a "constitution") for the community ownership of everything which would

otherwise have been the separate property of individual members. A member of the Order died in Minnesota, and his administrator, duly appointed in that state, sought to retain the personal property which the deceased member had in his possession at the time of his death.

The Circuit Court found that the terms of membership in the corporation governed the matter, and that it was entitled to the property. (179 Fed. 137.) The Circuit Court of Appeals reversed this decision on the ground that the conditions of the contract between the member and the Order were contrary to the policy, and emphasized the fact that "the property in controversy in Wirth at the time of his death, and under the Statutes of Minnesota would descend to his legal heirs." (194 Fed. 289, 300.)

This Court reversed the last decision, calling attention to the fact that so long as the contract provided for the cessation of membership at the wish of a member, it was not contrary to public policy, and that so long as his membership continued, he was bound by the by-laws of the Order. There is no discussion of the conflict of laws, but it is assumed throughout the decision that the rights of the parties are determined by the law and public policy of the State of New Jersey. See, also, to the same effect, cited by the Court:

Goesele v. *Bimeler*, 14 How. 589.
Schwartz v. *Duss*, 187 U. S. 8.
Schriber v. *Rapp*, 5 Watts, 351.
Burt v. *Oneida Community*, 137 N. Y. 346.
Speidel v. *Henrici*, 120 U. S. 377.
Gasely v. *Separatists*, 13 Ohio St. 144.
Waite v. *Merrill*, 4 Maine, 102.
Gass v. *Wilhite*, 2 Dana (Ky.), 170.
State v. *Amana Society*, 132 Iowa, 304; 8 L. R. A. (N. S.) 909, note; 11 Ann. Cas. 236, note.

The case differs from the present only in degree. In the present instance the Order and its members agree to cooperate for certain specific purposes. In the instance cited, the purpose and the terms of membership calculated to effect that purpose are very much wider. The principle, however, is the same in both cases; the contract is one of membership, and the rights of the parties are measured and determined by the terms upon which membership is held.

point, clearly recognizes that the real question is as to the extent of the power on the part of the corporation to modify the plan of the common enterprise.

> "It is not every change in the charter or articles of association of a corporation that will work such a departure from the purposes of its creation as to forfeit obligations incurred to it or prevent the carrying on of the modified business. . . .
>
> "There is much discussion in the authorities as to when a charter amendment is of that fundamental character that a majority of the members or stockholders cannot bind the minority by agreeing to a change in the nature of the business to be carried on or the purposes and objects for which the corporation was created. Each case depends upon its own circumstances, and how far the right of amendment has been impliedly or expressly reserved in the creation of corporate rights. It would be unreasonable and oppressive to require a member or stockholder to remain in a corporation whose fundamental purposes have been changed against his will. On the other hand, where the right of amendment is reserved in the statute or articles of association, it is because the right to make changes which the business may require is recognized, and the exercise of the privilege may be vested in the controlling body of the corporation. In such cases, where there is an exercise of the power in good faith, which does not change the essential character of the business, but authorizes its extension upon a modified plan, both reason and authority support the corporation in the exercise of the right. *Nugent* v. *The Supervisors*, 19 Wall, 241, 251; *Picard* v. *Hughey*, 58 Ohio St. 577; *Miller* v. *Insurance Company*, 92 Tennessee, 167, 185; *Supreme Lodge Knights of Pythias* v. *Knight*, 117 Indiana, 489."

We quote a few of the classical statements of this rule:

> "It may be stated as an indisputable proposition that every person who becomes a member of a corpora-

tion aggregate . . . agrees, by necessary implication, that he will be bound by all acts and proceedings *within the scope of the powers* and authority conferred by the charter, which shall be adopted or sanctioned by vote of the majority of the corporation, duly taken and ascertained according to law. . . . It cannot, therefore, be justly said that the contract, express or implied, between the corporation and the stockholders is infringed or impaired by any act or proceeding of the former which is authorized by a majority, and which comes *within the terms of the original statute*, creating and establishing their franchises, and conferring on them capacity to exercise control over the rights and property of their members. On the contrary, the fair and reasonable implication resulting from the legal relation of the stockholder and corporation is, that the majority may do any act either coming *within the scope of the corporate authority*, or which is consistent with the terms and conditions of the original charter, and even against the consent of an individual member."

Bigelow, C. J., in *Durfee* v. *Old Colony, &c., Rd. Co.*, 5 Allen, 230, 242.

"Where, as here, there is an express and clear reservation of the right to amend, he is bound to take notice of the existence and effect of that reserved power. . . . *Courts will compel adherence to the charter and to the purpose for which the society was organized, but they will not do more.*"

Supreme Lodge K. of P. v. *Knight*, 117 Ind. 489; 3 L. R. A. 409.

"Individual stockholders cannot question, in judicial proceedings, the corporate acts of directors, *if the same are within the powers of the corporation*, and in furtherance of its purposes, are not unlawful

or against good morals, and are done in good faith and in the exercise of an honest judgment."

Ellerman v. *Chicago Junction, etc., Co.*, 49 N. J. Eq. 217, 232; 23 Atlan. 287.

"A majority of stockholders, no matter how great, have not the right to divert the funds of a joint stock incorporated company to any other than the purposes for which it was organized; and if such funds are about to be so diverted, a stockholder may file a bill in equity against the company to restrain it by an injunction from such diversion or misapplication: . . . *But relief will not be granted unless the corporation is about to do some act outside of the scope of its authority, or in disobedience to the provisions of its constitution, for so long as it exercises the powers granted by the charter the acts of the company must be treated by the courts as the acts of all the stockholders.*

"Each and every stockholder contracts that the will of the majority shall govern in all matters coming *within the limits of the act of incorporation;* and in cases involving no breach of trust, but only error or mistake of judgment upon the part of the directors who represent the company, individual stockholders have no right to appeal to the courts to dictate the line of policy to be pursued by the corporation. . . ."

Dudley v. *Kentucky High School*, 72 Ky. (9 Bush) 576.

"It is well settled that minority stockholders cannot question in judicial proceedings, the acts of directors or majority stockholders, unless such acts are *ultra vires*, illegal or fraudulent."

26 Am. & Eng. Encyc., "Stock & Stockholders" (2d ed.), 959.

Apt statements of the rule might be quoted almost indefinitely, but we content ourselves with asking special attention to a single additional illustration from the early decisions of this court in a case much like the present.

A "Mutual Assurance Society" was incorporated by the legislature of Virginia in 1794. In 1805 the Society discovered that its country risks were proving much more costly than risks taken on town property. Accordingly, it adopted a by-law placing the town risks in one class at a given rate of assessment and the country risks in another class at another rate of assessment, and providing that a failure to pay assessments should suspend a member's right to insurance. The plaintiffs whose policies were transferred to the country class refused to pay the increased assessment on the ground that the change so changed the contract that they were no longer liable under it. The Court, in denying this contention, said:

> "The liability of this institution is of a twofold nature. It results both from an obligation to conform to laws of their own making, as members of the body politic, and from a particular assumption or declaration which every individual signs on becoming a member. . . . 'We will abide by, observe, and adhere to the Constitution, rules and regulations which are already established or may hereafter be established by a majority of the assured, . . . or which are, or will hereafter be established by the President and directors of the Society.' It would be difficult to find words of more extensive significance than these or better calculated to aid, explain, or enforce the general principle, that *a majority of a corporate body must have power to bind its individuals.*"
>
> "As to what is contended to be a material alteration in their charter, we consider it merely as a new arrangement or distribution of their funds; and *whether just or unjust, reasonable or unreasonable, beneficial or otherwise, to all concerned, was certainly a*

mere matter of speculation, proper for the consideration of the Society, and which no individual is at liberty to complain of, as he is bound to consider it as his own individual act. Every member, in fact, stands in the peculiar situation of being party of both sides, insurer and insured. Certainly the general submission which they have signed will cover their liability to submit to this alteration."

Korn v. *Mutual Ins. Co.*, 6 Cranch (U. S.), (1810).

Somewhat later Mr. Korn again brought this matter before the Supreme Court of the United States on the ground that the "former case" had merely established the continuance of the original contract, and that he was not liable for the increased assessment authorized by the change in the by-laws. This Court said:

". . . it is contended that the contract being complete between the parties, the insurers cannot add to the consideration to be paid for insurance. In general this doctrine is unquestionably correct, but peculiar circumstances except this from ordinary cases. This subject was considered in the quoted case decided between these same parties in February, 1810. It is there laid down, and on reflection we are confirmed in the opinion, that in the capacity of an individual of the body corporate the Defendants are bound by the by-laws of the society as far as is consistent with the nature of its institution."

Mutual Assurance Society v. *Korn*, 7 Cranch, 396, 399 (1813).

"*As far as is consistent with the nature of its institution*"—this is the test. It all comes down to a question of corporate power.

The Supreme Court of Massachusetts has clearly stated that this is the chief question in this very case.

"The first question is, was the change adopted in excess of the defendant's corporate powers, or in violation of the statute governing such corporations."

Reynolds v. *Supreme Council Royal Arcanum*, 192 Mass. 150, 153.

"The trial court" (Gaynor, J.) "held that the question was solely one of power, . . . Each member of the society is an insurer as well as an insured, and I think as an insurer he must be deemed to have contracted to pay his just and ratable share of the amount necessary to enable the defendant to keep its contract with its members and pay their dependents the stipulated sum, and the parties who have understood that changed conditions might necessitate a readjustment of rates, and hence that the society, under the reserve power to amend its by-laws assented to by the plaintiff, could make such readjustment."

Mock v. *Supreme Council Royal Arcanum*, 121 App. Div. 474, 476, 477.

See, also, to the same effect,—

Gaines v. *Supreme Council Royal Arcanum*, 140 Fed. R. 978.

2. This question of corporate power depends upon the "Public Acts" of the State of Massachusetts.

What determines the power of any corporation? The state which creates it, and that state alone.

" . . . This body . . . in its corporate capacity is the mere creation of the act to which it owes its existence, . . . *It may correctly be said to be precisely*

what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes. To this source of its being, then, we must recur to ascertain its powers."

Chief Justice Marshall in *Head* v. *Providence Ins. Co.*, 2 Cranch (U. S.), 127, 167.

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being a mere creature of the law, *it possesses only those properties which the charter of its creation confers upon it,* either expressly or as incidental to its very existence."

Chief Justice Marshall in *Dartmouth College* v. *Woodward,* 4 Wheat. 636.

"But whatever may be the implied powers of aggregate corporations by the common law, and the modes by which these powers are to be carried into operation, *corporations created by statute must depend both for their powers,* and the mode of exercising them, *upon the true construction of the statute itself.*"

U. S. Bank v. *Danbridge,* 12 Wheat. (U. S.) 64, 68.

"It may be safely assumed that a corporation can make no contracts, and do no acts either within or without the state which creates it, except such as are authorized by its charter; and those acts must also be done, by such officers or agents, and in such manner as the charter authorizes. And if the law creating a corporation, does not, by the true construction of the words used in the charter, give it the right to exercise its powers beyond the limits of the State, all contracts made by it in other states would be void. . . . The corporation must no doubt show

that the law of its creation gave it authority to make such contracts, through such agents."

Chief Justice Taney in *Bank of Augusta* v. *Earle*, 13 Pet. (U. S.) 519, 587, 589.

No doctrine of the law of corporations is more firmly established. "This rule applies to every kind of corporation."

7 Amer. & Eng. Encyc., "Corporations" (2d ed.), 695, citing upwards of two hundred cases.

"It is of course obvious that when the question of validity is dependent directly upon the power of the insurer, the law under which the insurer was organized, or the law by its domicile will govern."

1 Cooley's Briefs on Insurance, 561, and cases cited.

3. The courts of other states in deciding questions of corporate power must apply the law of the corporation's domicile.

(*a*) The Power of the Corporation, Whether at Home or Abroad, Depends Upon What Power Its Creator Originally Gave It.

"Every corporation necessarily carries its charter wherever it goes, for that is the law of its domicile. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs, both in life and after dissolution."

Relfe v. *Rundle*, 103 U. S. 222, 226.

"By subscribing to stock in a foreign corporation, defendant subjected itself to the laws of such foreign country in respect to the powers and obligations of such corporation."

Nashua Sav. Bank v. *Anglo Am., etc., Co.*, 189 U. S. 221, 230 (affirming s. c. 48 C. C. A. 15, 108 Fed. 764).

"By becoming a member of a Minnesota corporation, and assuming the liability attaching to such membership, he became subject to such regulation as the State might lawfully make to render the liability effectual."

Bernheimer v. *Converse*, 206 U. S. 516, 533.

The rule is well illustrated by the case of *Canada Southern Ry. Co.* v. *Gebhard*, 109 U. S. 527. The Canada Southern Railway Company was a Canadian corporation which made a "rearrangement" of its stock issues and outstanding obligations. Certain minority bondholders living in New York State refused to accept the reorganization plan or to be bound by its provisions. The Circuit Court gave judgment in their favor. The Supreme Court of the United States reversed this judgment, saying:

"Two questions are presented for our consideration:

"1. Whether the 'Arrangement Act' is valid in Canada, and had the effect of binding non-assenting bondholders within the Dominion by the terms of the scheme; and,

"2. Whether, if it did have that effect in Canada, the courts of the United States should give it the same effect as against citizens of the United States whose rights accrued before its passage."

The Court calls attention to the fact that "there is no constitutional prohibition in Canada against laws impair-

ing the obligation of contracts," and decides that the law is valid in Canada, although it would not be so in the states of the United States where the passage of laws of this character is forbidden.

The Court then takes up the operation of this reorganization plan upon non-consenting bondholders outside of Canada, and, citing *Relfe* v. *Rundle*, *supra*, says (page 537):

> "A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia*, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony. It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere."

The Court then adds, and the language might be applied almost literally to our case (page 538):

> "No better illustration of the propriety of this rule can be found than in the facts of the present case. . . . The corporation had become financially embarrassed, and was, and had been for a long time, unable to meet its engagements in the ordinary way as they matured. There was an urgent necessity that something be done for the settlement of its affairs. . . . A large majority of the creditors and shareholders had agreed on a plan of adjustment which would enable the company to go on with its business, and thus accommodate the public, and to protect the creditors to the full extent of the available value of its corporate property. . . . Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries. The fact that the bonds made in Canada were payable in New York is unimportant, except in determining by what law the parties intended their contract should be governed; and every citizen of a country other than that in which the corporation is located, may protect himself against all unjust legislation of the foreign government by refusing to deal with its corporations."

(*b*) THIS RULE IS UNIVERSALLY RECOGNIZED AS A WELL ESTABLISHED PRINCIPLE OF JURISPRUDENCE QUITE APART FROM CONSTITUTIONAL CONSIDERATIONS.

Several additional decisions of this court are referred to below in dealing with the constitutional aspect of the question, but it is worth while to note, as pointed out in the opinion last cited, that this recognition of the law of the domicile as the controlling factor in the deter-

mination of rights existing between a corporation and its members is fundamental to any orderly administration of justice, quite independent of constitutional considerations.

Thus, where an Englishman filed his bill in England to be protected against the forfeiture of his shares in a Dutch company, it was held that the law of Holland was conclusive in the matter.

Sudlow v. *Dutch Rhenish Ry. Co.*, 21 Beav. 43.

Similarly, the relations of an English shareholder to a French company are determined by the law of France.

> " . . . I apprehend that it is now established by the law of this country that one who becomes a shareholder in a foreign company, and therefore and thereby a member of that company — such company existing in a foreign country, and subject in all things to the law of that country — himself becomes subject to the law of that country, and to the articles or constitutions of that company construed and interpreted according to the law of that country in all things and as to all matters and all questions existing or arising in relation to or connected with the acts and affairs and the rights and liabilities of such company and its members severally and collectively; and if that company, by the law of the country in which it exists, or by the articles of its constitution, is subject to the jurisdiction of a particular court within that country, so also is each shareholder or member subject to its jurisdiction in all cases in relation to or connected with such company."

Kelly, C. B., in *Copin* v. *Adamson*, L. R. 9 Ex. 345, 349 (1874).
Affd. Court of Appeals, 1 Ex. Div. 17.

"If a company is incorporated by a foreign government so that by the constitution of that company the

members are rendered wholly irresponsible or only to a limited extent responsible for the debts and engagements of the company, the liability of the members as such would be the same in this country as in the country which created the corporation."

1 Lindley on Partnerships (4th ed.), 1487.

"The law of the country in which it is domestic determines (1) the constitution of a foreign corporation, (2) the legal relations of its members *inter se* and towards the corporation, and (3) their liabilities towards third parties."

Young, Foreign Companies and Other Corporations (in England), 182 (1912).

(*c*) THE TEXT BOOKS ARE THE SAME WAY.

"The relation of a shareholder to a corporation is more intimate than that of one who merely does business with it. It is no injustice to require of a shareholder assent to the laws of the State granting the charter, and it is held that he gives such assent. If a state makes certain laws for the regulation of corporations, one who wishes to become a member of a corporation of that state, should in justice and reason be required to acquaint himself with them. Accordingly, a citizen of Maryland purchasing stock in a Virginia corporation was held bound to pay assessments, agreeing after it parted with the stock, by purchase of a Virginia statute which provided that assignment should not operate to discharge a shareholder from assessments already due or thereafter to become due. The Supreme Court of the United States decided that a shareholder was bound by the construction put on a Missouri statute by the courts of Missouri, to the effect that the creditor of a cor-

poration might have further execution against a shareholder. Even if it alleged that the corporation is being mismanaged and a citizen of the state of forum treated *mala fide* the Court cannot interfere, if the acts are legal in the charter state."

Beale on Foreign Corporations, § 304.

"The contract of a shareholder is measured by the charter of constating instruments of the company of which he agrees to become a member. When a person agrees to become a shareholder in a corporation chartered by a foreign State, he must necessarily be held to contract with reference to all laws of that State which enter into the constitution of the company; and if the charter or incorporating act of the company provides that its shareholders shall be individually liable to creditors, he will become individually liable to the same extent as any other member, not because he is bound by the laws of the State where the company was incorporated, but because he has voluntarily agreed to the terms of the company's constitution. On the other hand, if the constitution to which a corporator has agreed does not provide for individual liability to creditors, he cannot be charged with individual liability anywhere. . . .

"It seems clear, upon principle, that a creditor of a corporation whose shareholders are individually liable for its debts may maintain a suit to enforce this liability wherever he can obtain jurisdiction over the necessary parties. The right to maintain a suit of this character outside of the jurisdiction of the State by which the corporation was chartered does not depend upon the comity of the State where the suit is brought, or its willingness to recognize and give effect to the laws of a foreign State; it depends upon the willingness of the courts to enforce a contract validly entered into between the parties in another jurisdiction. A refusal to grant a remedy in a case

of this kind would not be a refusal to enforce a foreign law; it would be simply a denial of justice."

2 Morawetz on Corporations, §§ 874, 875.

See to the same effect:

3 Clark & Marshall Private Corporations, §§ 562–564.

1 Cook on Corporations (7th ed.), § 223.

26 A. & E. Encyc. (2d ed.), 919, 942.

(*d*) CLEAR EXAMPLES OF THE RECOGNITION OF THIS RULE ARE FOUND IN THE DECISIONS OF ALMOST EVERY STATE IN THE UNION.

We content ourselves with making several illustrative excerpts from decisions having to do with organizations similar to the present plaintiff in error.

Thus, in passing upon a benefit certificate issued by a New York fraternal beneficiary corporation, the Supreme Court of Massachusetts held that the power of the corporation to admit beneficiaries depended upon the law of New York, and that under that law it might admit a citizen of Massachusetts who could not be a beneficiary in a Massachusetts corporation of the same sort.

Gibson v. *United Friends*, 168 Mass. 391, 47 N. E. R. 101.

In deciding the same question in case of a Tennessee corporation, the Massachusetts Court follows the law of Tennessee, although it is contrary to the law of Massachusetts.

Golden Cross v. *Merrick*, 165 Mass. 421; 43 N. E. 127.

See, also, to the same effect, following the law of Connecticut in case of a Connecticut corporation,

Larkin v. *Knights of Columbus*, 188 Mass. 22.

It is interesting to note that where the case depends upon the *lex loci contractus*, the Massachusetts Court follows the rule that the law applicable is the law of the place where the policy is made.

Millard v. *Brayton*, 177 Mass. 533, citing,
Equitable Assurance Society v. *Clements*, 140 U. S. 226.
Mutual Insurance Co. v. *Cohen*, 179 U. S. 262.
Mutual Insurance Co. v. *Phinney*, 178 U. S. 327.

In passing upon the power of a Massachusetts corporation, similar to the defendant, to limit the classes who might be named as beneficiaries, the Supreme Court of Maryland said:

> "The appellant is a corporation chartered under the laws of Massachusetts. . . . What the statute of Massachusetts authorizes to be done under it has been settled by the decisions of Massachusetts Courts, and those decisions are controlling as to the effect and meaning of the statute, and we should follow them as making a part of the law of the State, no matter whether they are entirely in harmony, with the decisions of other States upon somewhat similar statutes or not."

American Legion of Honor v. *Green*, 71 Md. 263, 266.

The same court in a later case, in deciding the liability of the present defendant upon the suicide of one of its members, applied Massachusetts law, saying:

> "The regulations contained in the constitution and by-laws of the society contemplate like treatment of

all of its members of the same class, without special favor or advantage to any, under a similar state of facts. . . . In a purely mutual association like the Royal Arcanum all members must be treated alike, for it would be destructive of the mutuality itself of the association if in suits against it the benefit certificate issued to a citizen of one State should be entitled to a more favorable construction than a similar certificate issued to a citizen of another State."

Royal Arcanum v. *Brashears*, 89 Md. 624, 631; 43 Atlantic, 866; 73 Am. St. Rep. 244.

But here again, as previously noted in the case of Massachusetts, when the question is simply one of life insurance, the rule in Maryland is the same as set out on page 62 of this brief,— the law of the place where the contract is made. See on this point, and expressly distinguishing the case of *American Legion of Honor* v. *Green*, just quoted:

Robinson v. *Hurst*, 78 Md. 59, 68.
Mutual Life Ins. Co. v. *Mullan*, 107 Md. 457, 463.

Similarly, in dealing with membership rights in a Massachusetts corporation, the Supreme Court of Connecticut follows the law of Massachusetts, although in both the cases cited it was conceded that the contract was made in Connecticut.

Supreme Lodge N. E. O. P. v. *Hines*, 82 Conn. 315, 317.
Supreme Colony Order of Pilgrim Fathers v. *Towne*, 87 Conn. 644.

In the same manner the Supreme Court of Michigan,

in passing upon rights derived from membership in a fraternal beneficiary corporation organized under the laws of Missouri, follows the statutes of that State.

Supreme Lodge K. of H. v. *Nairn*, 60 Mich. 44.

In a second Michigan case, *Warner* v. *Delbridge & Cameron Co.*, 110 Mich. 590, 34 L. R. A. 701, the defendants were Michigan members of a mutual fire insurance company incorporated in Minnesota, and held policies which expressly referred to the laws of Michigan. In a suit to collect an assessment, the Circuit Court held that their liability depended upon the law of Michigan, and entered judgment for the defendants. The Supreme Court held that this ruling was correct as applied to a Michigan corporation, but that in case of a Minnesota corporation (notwithstanding the stipulation as to Michigan law), its right to levy the assessment depended upon the law of Minnesota, which the Court examined, and found to be contrary to the Michigan rule. Judgment reversed.

In dealing with question of power of the Royal Arcanum to create beneficiaries, the Supreme Court of Illinois applies the law of Massachusetts.

Palmer v. *Welch*, 132 Ill. 141.

Similarly, in the case of a Missouri corporation, it follows the law of Missouri.

Grime v. *Grime*, 198 Ill. 265.

At the same time the contract is made in Illinois, and where the matter is governed by the *lex loci contractus*, as in case of a question of forfeiture depending on principles of insurance, the court follows the law of Illinois.

Coverdale v. *Royal Arcanum*, 193 Ill. 91.

And in general where the question is one of insurance, Illinois, like Maryland and Massachusetts, follows the law of the place where the contract is made, as set out on page 62, *supra*.

Pomeroy v. *Manhattan Life Ins. Co.*, 40 Ill. 398.

The courts of New Jersey in dealing with the right to name beneficiaries by members of the Royal Arcanum follow the law of Massachusetts, although they may not always wholly agree on what that law is.

Tepper v. *Royal Arcanum*, 59 N. J. Eq. 321.
Tepper v. *Royal Arcanum*, 61 N. J. Eq. 638.

Similarly the Supreme Court of Virginia in determining the rights of Virginia members in regard to the winding up of Missouri corporation will follow the law of Missouri.

Bockover v. *Life Association*, 77 Va. 85.

So, in the same matter, the Circuit Court of the United States will determine the rights of members of the corporation by reference to the law of Missouri.

Taylor v. *Life Association*, 13 Fed. 493, 497.

But where the question is one of insurance, Virginia will also follow the *lex loci contractus*.

Manhattan Life Ins. Co. v. *Warwick*, 20 Gratt. (Va.) 614, 628.

For further authorities, see *infra*, page 104 *et seq.*

(*e*) THIS PRINCIPLE HAS RECEIVED JUDICIAL RECOGNITION IN THE CONTROVERSY BROUGHT BEFORE THE COURT BY THIS WRIT.

"Moreover, the law of the State of Massachusetts, under which the defendant was organized, is a part of the contract, and the Court, competent to speak authoritatively on that subject, has said, as stated *supra*, that said amendment did not offend the law under which the defendant was created. It is true that the contract was made in this state . . . but even if the law of Massachusetts does not govern the defendant's right to amend its by-laws in the respect under consideration, there are weighty reasons in addition to considerations of comity why the courts of this state should follow the decisions of that state on the question of the defendant's power to readjust its rates by an amendment to its by-laws for the purpose of perpetuating its existence."

Mock v. *Supreme Council Royal Arcanum*, 121 App. Div. 474, 477.

"The defendant is an association organized under the laws of the State of Massachusetts, and that is the state of the defendant's domicile and chief office . . . it must be apparent that it is an extremely delicate question for the courts of any jurisdiction other than Massachusetts, the state of the defendant's creation and the state of its domicile, to interfere by injunction with the internal regulation and management of the affairs of this benevolent association. . . . It is obvious enough that the law of Massachusetts furnishes the rule for the decision of the question now up for disposition, and all similar questions relating to this association and its powers and authority. . . . If the courts of any state may exercise jurisdiction for such purposes outside the state in which the defendant association was created and has its principal office and domicile, it is equally true that the courts of the forty-three or forty-four dif-

ferent states where members may be can exercise similar power and authority. If this were done, it would speedily bring about such a situation as would make emphatic a proposition that the courts of any state other than Massachusetts should only exercise authority to interfere by injunction with the internal management and operation of the association upon the clearest and most cogent grounds. . . .

"I conclude, as already plainly intimated, that the law of Massachusetts furnishes the rule for the decision of this question, and I further conclude that under the law of Massachusetts, in accordance with the exposition of its court of highest authority, the defendant might, in view of its contract, make the change which it has made."

Gaines v. *Supreme Council of the Royal Arcanum*, 140 Fed. 948.

4. There is no doubt about the law of Massachusetts in this case.

The trial court in the present case finds this fact in favor of the plaintiff in error, and the opinion of the Court of Appeals admits the same fact.

The Court of Appeals sought to avoid the effect of the finding made by the trial court as to the Public Acts of Massachusetts,—

"Because (1) the trial court also found 'that the contract in all its essentials between the parties was entered into, made and completed in the State of New York' and (2) the Statute of Massachusetts, under which the defendant claims the power to amend as to rates of assessment, was not enacted until 1902 and expressly provides that amendment, alteration or repeal shall not take away or impair any remedy which may exist by law." (Record, p. 147.)

(*a*) THE FACT THAT THE CONTRACT WAS MADE IN NEW YORK IS IMMATERIAL.

The application of Massachusetts law to the case arises from the *nature of the contract*, wholly regardless of the place of contract. It would not matter if the contract were "entered into, made, and completed" in Africa;—so long as it is a contract of membership in a Massachusetts corporation, the right arising from it will be determined by the law of Massachusetts, unless that law is rendered nugatory by an express and contrary statute. For a fuller discussion of this point, see pages 62 *et seq.* of this brief.

(*b*) THE STATEMENT THAT THE MASSACHUSETTS STATUTE "WAS NOT ENACTED UNTIL 1902" IS AN OBVIOUS ERROR.

Open and palpable misstatements as to matters of record are not of binding force merely because they may, through inadvertence, find their way into a judicial opinion.

The Record shows that the Revised Laws of Massachusetts, "Edition of 1902," was put in evidence as "Exhibit J," and that attention was called to chapter 109, section 3, on page 147, stating the reserved power of corporate amendment in the State Legislature. (Record, p. 61.) Inspection of this exhibit shows that this provision was originally enacted in 1831, and the language of the section as printed on page 95 of the Record shows that it was enacted prior to March 11, 1831. The introductory caption printed on page 95 of the Record, *Revised Laws of Massachusetts, Passed in the Year 1902*, is no part of the exhibit, because the actual phrase on the title page is "Enacted November 21, 1901, To Take Effect January 1, 1902." The words as printed in the Record merely illustrate the provoking kind of clerical error which will inevitably at times creep even into court records.

Similarly, inspection of the same exhibit shows that the provision as to rates relied upon in this case, Revised Laws, c. 119, § 6, was enacted as c. 204 of the Acts of 1877, and again as c. 195 of the Acts of 1882, both dates considerably previous to the plaintiff's entry into the Order.

Even if the printed record were construed in the narrowest way, the statement that these laws were passed in 1902 would not negative their existence prior to that time. One might readily assume, as the fact really is, that the "Revised Laws of 1902" was a codification and reenactment of the previously existing statutes of the state.

This remark in the opinion of the Court of Appeals does not purport to be a finding of fact. It is without foundation in the Record, and at most, represents a bit of misdirected judicial notice, which is not binding upon anyone. Even if these statutes had not been passed until 1902, they might still have been binding upon the defendant in error.

(*c*) The Order is Entitled to Rely Upon the Plain Finding of Fact Contained in the Record.

This statement is perfectly clear and explicit. It was not in any way limited or qualified by the trial court, and correctly summarizes the evidence introduced at the trial.

> "That by the *statutory law or public acts* of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment."
>
> Finding LXXVII., Record, p. 25.

There could be no question of the application of this general statement to the facts before the Court. Indeed,

the Appellate Division in a practically identical case put the matter even more flatly:

> "Said amendment was authorized by the laws of the state which created the defendant. (*Reynolds* v. *Royal Arcanum*, 192 Mass. 150.)"
>
> *Mock* v. *Supreme Council Royal Arcanum*, *supra*, p. 475.

No other finding was possible in view of the Reynolds case, referred to in the last excerpt. The effect of this case as a binding judgment is discussed below (p. 101), but the language of the opinion by Chief Justice Knowlton, representing the unanimous decision of the Supreme Court of Massachusetts, deserves careful consideration, and sheds so much light on many phases of the question that we quote at length from it, as follows:

> "KNOWLTON, C. J. This is a bill in equity to set aside certain changes in the defendant's by-laws which affect the rights of certificate holders. The defendant is a fraternal beneficiary association, organized under the laws of Massachusetts in 1877, and now subject to the provisions of R. L. c. 119, and the acts in amendment thereof. The plaintiffs are certificate holders, who bring this bill for themselves and in behalf of others. . . .
>
> "Prior to the session of the Supreme Council in May, 1905, the executive committee caused mortality tables of the order to be prepared, and made extended investigations and studies with the aid of competent actuaries, to devise some method, through a change of by-laws, which should enable the corporation to meet its obligations to members. The actuaries prepared for them new tables, each the mathematical equivalent of the others, the first being the regular rates and three others optional alternatives. These were founded upon the payment by the order of the maximum value of each certificate, and the payment

by the member of a rate adequate, without further modification or additional assessment, to pay the certificate at the maturity thereof. . . .

"Under these conditions the changes recommended by the actuaries were adopted by an amendment of the by-laws by an almost unanimous vote of the members of the Supreme Council, and the question is whether the changes are legal and binding upon the members.

"From facts agreed it is plain that a great corporation, managing and controlling important financial interests for hundreds of thousands of families, was conducting its business upon unsound principles, which, if followed without change, would ultimately lead to financial ruin. The first question is, was the change adopted in excess of the defendant's corporate powers, or in violation of the statute governing such corporations.

"The statutes authorize the adoption of by-laws declaring 'the manner in which . . . the purposes of its incorporation may be accomplished.' R. L., c. 125, § 6; c. 119, § 2. These by-laws may prescribe the 'assessments and benefits in case of disability or death, and the conditions upon which the same shall be paid . . . the method of the amendment of the by-laws, and such other provisions as the corporation may determine.' R. L. c. 119, § 2. Such a corporation 'may make provisions for the payment of benefits in case of death or disability or both. The funds from which the payment of such benefits shall be made shall be derived only from assessments collected from the members . . . Such provisions, funds, assessments and payments shall be as required in the by-laws of the corporation.' R. L., c. 119, § 6.

"Plainly the statute contemplates that such corporations shall have power to establish by their by-laws a system of giving death benefits which shall be sound and equitable, and founded on principles which can reasonably be expected to furnish proper security for the performance of their contracts with members. The power to make proper changes in these particulars by amendment of the by-laws from time to time is expressly given.

"There is no ground for the contention that it is a violation of the statute or of the defendant's chartered rights to provide for such assessments as will be likely to insure the payment of the sums named in the certificates. The statute expressly authorizes, not only a death fund amounting to three full assessments upon the members, but also the accumulation of an emergency fund amounting to 5 per cent upon the face value of all outstanding benefit certificates. The emergency fund is to be invested in safe securities, and all of these are to be deposited with the Treasurer of the Commonwealth. R. L., c. 119, § 7. As the promise to pay the beneficiary is binding upon the corporation, it ought to make adequate provision to obtain the means of payment. *Newhall* v. *American Legion of Honor*, 181 Mass. 111. . . .

"The distinctive features of such organizations remain since the adoption of the amendments as well as before. The fraternal plan, with mutuality and without profit, distinguishes the work of such an association from a commercial enterprise. It is a charitable and benevolent organization, with a limitation of membership to a special class, and a limitation upon the choice of beneficiaries. It is not allowed to employ paid agents in soliciting or procuring business, except within very narrow limits prescribed by the statutes. R. L., c. 119, § 16. Looking to the nature and purposes of fraternal beneficiary corporations, we see nothing in the amendments at variance with the law. It cannot have been intended that such corporations should be limited to a method of assessment that would be sure to bring about their early dissolution.

"Another question is whether the amendments are in violation of the contract rights of members. It is stated in the record that 'the agreements between the plaintiff and the defendant concerning assessments and benefits are not contained in any one specific instrument, but are found in the application for membership, the benefit certificate, the laws of Massachusetts constituting the charter and the constitution and laws of the order.' If there were no express stipulation in regard to the by-laws in the application for mem-

bership or in the certificates, all members of such a corporation would be bound by by-laws regularly made or amended. *Durfee* v. *Old Colony, &c., Railroad Co.*, 5 Allen, 230, 242; *Pain* v. *Societe St. Jean Baptiste*, 172 Mass. 319; *Oliver* v. *Hopkins*, 144 Mass. 175; *Spillman* v. *Supreme Council Home Circle*, 157 Mass. 128; *Wright* v. *Minn. Mutual Life Insurance Co.*, 193 U. S. 657; *Supreme Lodge Knights of Pythias* v. *Knight*, 117 Ind. 489.

"Every member of this corporation, at the time of joining it, enters into an express agreement to 'conform to and abide by the constitutions, laws, rules and usages of the said council and order, now in force or which may hereafter be adopted by the same.' The certificates promise payment only on condition that the member complies 'with the laws, rules and regulations now governing said council and fund, or that may hereafter be enacted by the Supreme Council to govern the said council and fund,' etc. Here in the contract is full authority to amend the laws, rules and regulations. . . ."

The Court then states the case of *Korn* v. *Mutual Assurance Co.*, 6 Cranch, 192, cites several other cases, and says:

"This promise on one side is set over against the promise of the member on the other. The promise of the member is to do what may be called for by the by-laws then existing or that may afterwards be adopted. The promise of the corporation is stated expressly, without mention of the by-laws. The member occupies a dual position, as an insurer and the insured. As one of the association agreeing to provide for the payments that may become due to members, he agrees to be subject to the by-laws. As the insured person to whom a particular sum of money is promised, he has a right to stand on the terms of the promise.

"That the duties of members prescribed by the by-laws remain subject to modification when a power of amendment is reserved has often been decided. *Loeffler* v. *Modern Woodmen of America*, 100 Wis. 79;

Langnecker v. *Grand Lodge A. O. U. W.*, 111 Wis. 279; *Lawson* v. *Hewell*, 118 Cal. 613; *Gilmore* v. *Knights of Columbus*, 77 Conn. 58; *Ellerbe* v. *Faust*, 119 Mo. 653.

"Most of the cases relied on by the plaintiffs, when rightly analyzed, turn on the distinction between an attempted amendment of the by-laws directly affecting the promise to the certificate holder as an insured person and an amendment affecting his duties as a member of the corporation bound to perform his part in providing means or otherwise as one of the association of insurers."

The Court cites several cases and continues:

"On principle and on the weight of authority we are of opinion that there is nothing in this contract that prevents the corporation from amending its by-laws in a reasonable way, to accomplish the purposes for which it was organized, even though the change increases the payments to be made by certificate holders. Such changes necessarily involve some hardship to certain individual members, but the corporation, under the law, should do that which will bring the greatest good to the greatest number. The members who complain of its action are those who have had the benefit of insurance for themselves and their families for many years, at very much less than the cost of their insurance to the corporation. They have had the good fortune to survive, and, therefore, their contracts have brought them no money, but all the time they have had the stipulated security against the risk of death. If now they are called upon to pay for future insurance no more than its cost to the corporation, they ought not to think it unjust.

Bill Dismissed."

IV.

THE PLAINTIFF IN ERROR HAS A CONSTITUTIONAL RIGHT TO HAVE THE LAW OF MASSACHUSETTS APPLIED TO THE FACTS OF THE CASE. THE REFUSAL OF THE COURTS OF NEW YORK TO APPLY THIS LAW DENIES TO THE PUBLIC ACTS OF MASSACHUSETTS THE FULL FAITH AND CREDIT GUARANTEED BY THE UNITED STATES CONSTITUTION.

The judgment of the New York courts denies full faith and credit to both "Public Acts" and "Judicial Proceedings" of the State of Massachusetts. This double refusal raises practically a single point, but inasmuch as the constitutional requirement extends to both legislative acts and judicial proceedings it may help to clearness to discuss the two matters separately.

1. The duty to give full force and effect to the Public Acts of a sister state "is as obligatory as the similar duty in respect to the judicial proceedings of that state."

Smithsonian Institution v. *St. John*, 214 U. S. 19, 28, citing

Chicago & Alton Railroad Company v. *Wiggins Ferry Co.*, 119 U. S. 615, 622.

Hancock National Bank v. *Farnum*, 176 U. S. 640, 642.

Mills v. *Duryee*, 7 Cranch, 481.

See, also, to the same effect,

Whitman v. *Oxford National Bank*, 176 U. S. 559.

Flash v. *Conn.*, 109 U. S. 371.

2. The effect of the law, as well as its existence, was clearly proved in this case.

The form and nature of proof required in such cases is well indicated by Chief Justice Waite in *Chicago & Alton*

Railroad Company v. *Wiggins, supra,* in his comments upon the evidence before the Court in that case.

> "Upon the trial the statute of Illinois was put in evidence, but no evidence was offered as to what effect those statutes had in the State of Illinois. . . . Without doubt the constitutional requirement, Art. IV., § 1, that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state,' implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home. . . .
>
> "Whenever it becomes necessary under this requirement of the Constitution for a court of one state, in order to give faith and credit to a public act of another state, to ascertain what effect it has in that state, the law of that state must be proved as a fact. . . . This was expressly decided in *Hanley* v. *Donoghue,* 116 U. S. 1, in respect to the faith and credit to be given by the courts of one state to the judgments of the courts of another state, and it is equally applicable to the faith and credit due in one state to the public acts of another.
>
> "Whether the charter of this company in its operation on the contract now in suit, had any different effect in Illinois, from what it would have, according to the principles of general law which govern like charters and like contracts, in Missouri and elsewhere throughout the country, was, under this rule, a question of fact in the Missouri court, as to which no testimony whatever was offered. The case from the beginning to the end, both in the pleadings and in the requests for rulings, seems to have been considered by the parties and by the court as involving questions of general law only, which were not at all dependent upon anything peculiar to the jurisprudence of Illinois. . . . So, in the requests for findings, no special reliance was had on any peculiar law or usage in Illinois, but, on the general claim that the contract 'was illegal and the defendant had no legal right or authority to bind itself to comply with and perform the same.' . . .

> It thus appears conclusively, as we think, that both the parties and the court understood, as they certainly might from the way this case was presented, that the decision was to be made, not upon anything peculiar to the State of Illinois, but upon the general law of the land applicable to the facts established by the evidence. Such evidently was the ground of the decision, and that being so it is well settled we have no power to bring it under review. The decision would have been the same upon the case as made, whether the Constitution had contained the provision relied on or not. . . .
>
> "It is not enough to give us jurisdiction to say in the pleadings, or elsewhere in the course of the proceedings, that the contract, whatever it might be in Missouri, was beyond the powers of the company under its acts of incorporation as they were construed and given effect by law and usage in Illinois. It must somehow be made to appear on the face of the record that the facts as they were actually presented for adjudication made it necessary for the court to consider and give effect to the act of incorporation in view of some peculiar jurisprudence of Illinois rather than the general law of the land. That, we have seen, was not done in this case."

Every one of the requirements which the Court notes as lacking in the foregoing excerpt is shown in the record in our case.

(*a*) "THE LAW OF THAT STATE MUST BE PROVED AS A FACT."

Here the law of Massachusetts was proved as a fact by the presentation of the printed statutes in the manner prescribed by the New York Code, and also by oral testimony.

> New York, Code Civil Procedure, § 942.
> Record, p. 61 (fol. 112, 113).

(*b*) "THE CASE FROM THE BEGINNING TO THE END, BOTH IN THE PLEADINGS AND IN THE REQUEST FOR RULINGS, SEEMS TO HAVE BEEN CONSIDERED BY THE PARTIES AND BY THE COURT AS INVOLVING QUESTIONS OF GENERAL LAW ONLY WHICH WERE NOT AT ALL DEPENDENT UPON ANYTHING PECULIAR TO THE JURISPRUDENCE OF ILLINOIS."

On the contrary, in this case the defendant's answer, after making certain denials, pleads as the beginning of its affirmative defence that it "was and still is a fraternal beneficiary corporation, organized and existing under the laws of the Commonwealth of Massachusetts" (Record, p. 6, fol. 11); "that the contract included the laws of the Commonwealth of Massachusetts, that certain rights were conferred by certain statutes of Massachusetts which formed a part of the charter of the defendant, and contained provisions authorizing the changes complained of." (Record, p. 8, fol. 15.)

The answer further set up that "For a second, further and separate defence, . . . That it was and is provided in and by the Revised Laws of the Commonwealth of Massachusetts, chapter 119, section 2, that fraternal beneficiary organizations, of which the defendant, Supreme Council of the Royal Arcanum, is one, may revise, alter and amend their rates of assessment and tables thereof, and that under and by the law of the said Commonwealth of Massachusetts as determined by its courts of competent jurisdiction, fraternal beneficiary corporations, of which said defendant is one, have power to revise, amend and alter their rates of assessment and their tables thereof; that the corporate power of the defendant, Supreme Council of the Royal Arcanum, and the plaintiff's rights depending upon his membership therein, are determined by the public acts of the State of Massachusetts which authorize the changes complained of and the plaintiff is bound thereby." (Record, p. 10; fol. 17.)

The answer also sets out in detail the litigation already had in the State of Massachusetts and claims rights under the determination of the Supreme Judicial Court, and the judgment in the case of *Reynolds et al.* v. *Supreme Council of the Royal Arcanum*, 192 Mass. 150. (Record, pp. 12, 13; fol. 22.)

(*c*) "No Special Reliance was had on Any Peculiar Law or Usage in Illinois."

But here, both in pleadings and in evidence, attention was directed to a definite, particular law, namely, "The Revised Laws of Massachusetts, c. 119, §§ 2 and 19," pleaded in the answer (Record, p. 10; fol. 17), pointed out at the trial as "Volume 1, page 1168" (Record, p. 61; fol. 112), and attention was also called to these and several other sections as indicated by Exhibits I and J in Record, pp. 91–95, inclusive. Moreover, the usage and effect of these statutes was shown by a witness, and sought to be shown by a duly certified court record, which the Court excluded against the defendant's objection. (Record, pp. 61, 62; fols. 113–115; Exhibit K; Record, pp. 96–109; fols. 248–269.)

(*d*) " . . . the Court Understood, as They Certainly Might from the Way This Case Presented, that the Decision was to be Made not upon Anything Peculiar to the State of Illinois but upon the General Law of the Land."

In the present instance, however, the Court clearly indicated that it knew it was passing upon matters peculiar to the law of Massachusetts.

The trial court includes in its decision the finding already referred to:

> "LXXVII.— That by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal

beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment." (Record, p. 40, fol. 76.)

The opinion of the trial court also indicates his intention to follow the laws of New York, regardless of the fact that the defendant is a Massachusetts corporation. (Record, p. 112, fol. 275.)

The Appellate Division, which decided the case for the plaintiff in error on other grounds and reversed the trial court, did not find it necessary to discuss the constitutional question, and therefore properly omitted any mention of it.

The Court of Appeals clearly recognized the problem, as appears in the excerpt from their opinion already cited on page 14 of this brief.

In view of these circumstances, the plaintiff in error may fairly claim that it has satisfied the requirement of this Court,— that it "*must somehow be made to appear on the face of the Record that the facts as they were presented for adjudication made it necessary for the Court to consider and give effect to the act of incorporation in view of some peculiar jurisprudence of Illinois,*" (*Massachusetts*) "*rather than the general law of the land.*"

Chicago, etc., Ry. Co. v. *Wiggins Ferry Co., supra.*

3. The judgment of the New York courts denies full faith and credit to the Public Acts of Massachusetts thus brought before it.

The New York Trial Court found the effect of these Massachusetts cases without qualifying terms, and then paid no further attention to them.

Finding LXXVII. made by the trial judge (Record, p. 25, fol. 47), and the judgment entered by him, when read

together show the clearest possible violation of the Constitution of the United States and of the Act of Congress made in pursuance thereof.

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."
>
> Constitution of the United States, Art. IV., § 1.

> "The acts of the Legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."
>
> Revised Statutes of the United States, c. 17, § 905.

(*a*) This is Not a Case of Misinterpreting a Statute Without Denying its Validity.

The trial court was free to make his own interpretation of the Massachusetts law put upon him. It is, of course, well "settled that the mere construction by a State court of the statute of another State, without questioning its

validity, does not deny to it the full faith and credit demanded by the constitutional provision."

Smithsonian Institution v. *St. John*, 214 U. S. 19, 29.

Citing:

Glenn v. *Garth*, 147 U. S. 360.
Lloyd v. *Matthews*, 155 U. S. 222.
Banholzer v. *New York Life Insurance Co.*, 178 U. S. 402.
Johnson v. *New York Life Insurance Co.*, 187 U. S. 491.
Finney v. *Guy*, 189 U. S. 335.
Allen v. *Alleghany Co.*, 196 U. S. 458.

(*b*) THIS IS NOT A CASE WHERE THE STATUTE OF THE DOMICILIARY STATE IS RENDERED NUGATORY BY CONTRARY LEGISLATION IN NEW YORK, WHICH THE CORPORATION MIGHT BE DEEMED TO HAVE ACCEPTED BY COMING INTO THE STATE.

Neither can the neglect of this statute be justified by the apparently well settled rule that when a corporation enters a state which has a statute modifying certain of its domiciliary powers, it will be understood to have accepted the provisions of such modifying statute by entering the latter state.

Thomas v. *Matthiesen*, 232 U. S. 221.
National Mutual B. & L. Assn. v. *Brahan*, 193 U. S. 635.
Pinney v. *Nelson*, 183 U. S. 144.
New York Life Ins. Co. v. *Cravens*, 178 U. S. 389.

On the contrary, the statutes of New York as pointed out below (pp. 123–126) expressly approve changes cal-

culated, like the one in question, to put similar organizations upon a solvent basis, and require similar domestic corporations to increase their rates from time to time if an actuarial examination (similar to that made by the present plaintiff in error) shows that an increase is needed.

There is no suggestion that these statutes are penal in nature. They are entitled to have the same effect in the courts of New York as they have by law and usage in the courts of Massachusetts.

V.

THE NEW YORK COURTS REFUSED TO GIVE FULL FAITH AND CREDIT TO THE JUDGMENT OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS IN THE CASE OF REYNOLDS *v.* SUPREME COUNCIL ROYAL ARCANUM, AS REQUIRED BY THE CONSTITUTION AND STATUTES OF THE UNITED STATES.

A copy of this judgment, duly certified in accordance with the requirements of the United States Statutes, was offered in evidence by the plaintiff in error, and excluded by the Court, subject to exception. (Record, p. 62; fol. 113–115.)

1. The exclusion of this judgment as evidence is in itself reversible error.

The constitutional requirements as to full faith and credit are first and foremost a most solemn rule of evidence. As pointed out by this Court:

> "Those provisions establish a rule of evidence, rather than of jurisdiction."
>
> *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 296.

Citing:

Story, Conflict of Laws, § 609.
Thompson v. *Whitman*, 18 Wall. 457, 462, 463.

The New York Court was free to examine the jurisdiction of the courts of Massachusetts in respect to the judgment offered in evidence, but its entire exclusion is the strongest form of denying it any "faith and credit" whatever.

2. The effect of this judgment is not lessened by the statement of the trial court that the case in question "was decided upon an agreed statement of facts and the plaintiff was not directly or indirectly a party thereto." (Finding XXV., Record, fol. 34.)

(*a*) THE FACT THAT THE REYNOLDS CASE "WAS DECIDED UPON AGREED STATEMENT OF FACTS" DOES NOT AFFECT THE FORCE OF THE JUDGMENT BASED THEREON.

Any possible argument on this score is answered by the long and careful opinion of MR. CHIEF JUSTICE WHITE in the case of

Harding v. *Harding*, 198 U. S. 317.

There is no question about the good faith of the Reynolds litigation. The agreement as to certain evidence in that case was "not a consent to the decree in relation to that subject" but merely "concerned the state of the proof in the record." It did not in any way limit the power of the Court to make findings on the evidence before it.

Harding v. *Harding*, *supra*, p. 334.

See, also, to the same effect:
Yates v. *Utica Bank*, 206 U. S. 181.
Northern Pacific Ry. Co. v. *Slaght*, 205 U. S. 122, 130.
Gould v. *Evansville Rd. Co.*, 91 U. S. 526.
Harris v. *Balk*, 198 U. S. 215.
Alley v. *Nott*, 111 U. S. 472.
Bissell v. *Spring Valley Twp.* 124 U. S. 225.

As matter of fact, very slight examination of the agreed facts, which are set out in full in the record (pp. 101–107)

as a part of the judgment roll in the Reynolds case, shows that they are identical with the facts in the present case.

As pointed out by the Court of Appeals, "It was conceded by counsel upon the argument that there are no disputed facts, and this concession accords with our view of the findings. The actual findings of fact are purely formal and beyond dispute, and the rest, although classified as matters of fact, are really conclusions of law." (Record, p. 147.)

(*b*) THE STATEMENT THAT "THE PLAINTIFF WAS NOT DIRECTLY OR INDIRECTLY A PARTY" TO THE REYNOLDS CASE IS MERELY A CONCLUSION OF LAW.

The record shows:

(1) The defendant in error became a member of the plaintiff in error corporation in 1883, and remained a member down to the date of this action. (Finding No. 10, Record, p. 10; fol. 31.)

(2) The Reynolds suit was brought on November 29, 1905, by sixteen members of the defendant (five of whom were residents of New York City) in behalf of themselves and of all other members of the corporation who should join with them against the defendant to enjoin it from enforcing the rates complained of in the present action; a hearing was had, and final judgment was given in favor of the defendant on May 18, 1906. (Record, pp. 96–109; fol. 248–267.)

The defendant in error does not question these facts which are amply sufficient in legal contemplation to make him a party to the Reynolds case. The so-called "findings" of the trial court is an instance of what MR. CHIEF JUSTICE WHITE has recently characterized as "the grave error of stating a conclusion of law as a finding of fact."

Jackson v. *United States*, 230 U. S. 1.

At best it is a case, "where," to use the language of Mr. Justice Day, "what purports to be a finding of fact is not strictly such, but is so involved with and dependent upon questions of law bearing upon the alleged Federal right as to be a decision of those questions rather than of a pure question of fact."

Miedrich v. *Lauenstein*, 232 U. S. 236, 243.

3. The validity of the membership assessments here in question was conclusively determined by the judgment in the Reynolds case, and the defendant in error is bound thereby.

(*a*) A Member of a Corporation is Bound by a Decree against a Corporation in Respect to Corporate Matters such as the Making of an Assessment.

> "We understand the rule to be . . . that the stockholder is bound by a decree of a court of equity against the corporation in enforcement of a corporate duty, although not a party as an individual, but only through representation by the company.
>
> "A stockholder is so far an integral part of the corporation that, in the view of the law, he is privy to the proceedings touching the body of which he is a member. *Sanger* v. *Upton*, 91 U. S. 56, 58. . . .
>
> "We think it cannot be doubted that a *decree against a corporation in respect to corporate matters, such as the making of an assessment in* the discharge of a duty resting on the corporation, necessarily binds its members in the absence of fraud, and that this is involved in the contract created in becoming a stockholder."

Hawkins v. *Glenn*, 131 U. S. 319, 329, 332.

See to the same effect:

Glenn v. *Liggett*, 135 U. S. 533.

Glenn v. *Marbury*, 145 U. S. 499, 506.

Lehman, etc., Co. v. *Glenn*, 37 Als. 618, 625, 626.
Furnald v. *Glenn*, 64 Fed. 49; 26 U. S. App. 202.
Glenn v. *Foote*, 36 Fed. 824.
Calloway v. *Glenn*, 105 Ky. 648.
Glenn v. *Williams*, 60 Md. 93.
Castleman v. *Templeman*, 87 Md. 546.
Priest v. *Glenn*, 51 Fed. 400.
Hamilton v. *Glenn*, 85 Va. 901.
Howard v. *Glenn*, 85 Ga. 238.
McKin v. *Glenn*, 66 Md. 479.
Semple v. *Glenn*, 9 Ala. 245.
Glenn v. *Springs*, 26 Fed. 494.
Vanderwerken v. *Glenn*, 85 Va. 9.
Lewis v. *Glenn*, 84 Va. 947.

These cases arose over assessments made by the trustees of the National Express and Transportation Company, a corporation of Virginia, upon the members of the corporation. The validity of these assessments was affirmed by the Court of Appeals of Virginia, and the trustees then sought to make collections from members outside the State of Virginia. These foreign shareholders contended that, as there had been no personal service upon them and no personal connection on their part with the Virginia litigation, they were not bound by its result, and were entitled to raise *de novo* the question of the validity of the assessment made by the trustees. This claim was denied in each of the decisions cited above.

> "Neither Templeman nor Bryan were served with process in the Virginia court, . . . but in the case of *Glenn, Trustee* v. *Williams*, 60 Md. 93, this Court held that a decree of the Virginia court making assessments on stock of a Virginia corporation, held by stockholders who were not parties to the suit, was valid and binding on them, both as to the necessity for the assessment and the amount thereof. . . .

> That decision has been distinctly approved of by the Supreme Court of the United States in *Glenn* v. *Hawkins*, 131 U. S. 330, and other cases in this state as well as elsewhere."
>
> *Castleman* v. *Templeman*, *supra* (87 Md. 546, 548, 549).

These cases are identical in principle with the present situation. There, as in the present action, the court of the domicile of the corporation affirmed the validity of certain membership assessments in an equity suit to which the corporation was a party. Later this decree was invoked as a conclusive adjudication of the validity of these assessments as against members of the corporation who had not been parties to the suit, except as they were in privity with the corporation. In the cases cited this decision was held to be a conclusive judgment that the assessment was due, so as to permit the plaintiff to collect the amount of it from the member in an action at law. In the present case the appellant corporation contends that this decree is a conclusive judgment that the assessment was due, so as to permit the corporation to collect the amount of it from the member by suspending him from membership for failure to pay. The whole question in this case, as well as in those cited, is whether a given assessment is due from the member. And in both instances the judgment of a court of competent jurisdiction in an action against the corporation is conclusive against the member.

This rule has recently been again stated and affirmed in a line of decisions involving the faith and credit to be given to a Minnesota statute, and to a Minnesota judgment entered pursuant to its terms.

> "It may be regarded as settled that upon acquiring stock the stockholder incurred an obligation arising

from the constitutional provision, contractual in its nature and, as such, capable of being enforced in the courts not only of that State, but of another State and of the United States, *Whitman, etc.* v. *Bank*, 176 U. S. 559, although the obligation is not entirely contractual and springs primarily from the law creating the obligation. *Christopher* v. *Norvell*, 201 U. S. 216."

. . . . . .

"It is obviously an act intended to make effectual the liability which is incurred by stockholders under the constitution of the state, and it ought not to be rendered nugatory unless substantial objection exists against its enforcement. It operates equally upon all stockholders at home and abroad and assesses all by a uniform rule."

"It is said that the stockholder is held liable in a proceeding to which he is not a party. . . . In such case it has been frequently held that the representation which a stockholder has by virtue of his membership in the corporation is all that he is entitled to. It was so held in a well-considered case in Massachusetts, *Howarth* v. *Lombard*, 175 Massachusetts, 570.

. . . . . .

"By becoming a member of a Minnesota corporation, and assuming the liability attaching to such membership, he became subject to such regulations as the state might lawfully make to render the liability effectual."

MR. JUSTICE DAY in *Bernheimer* v. *Converse*, 206 U. S. 516.

"The defendants here" (in a case brought in Wisconsin) "were stockholders in the company and failed and refused to pay either assessment, although payment was duly demanded of them. . . . The complaints set forth the proceedings in the sequestration suit and the provisions of the Minnesota constitution and statutes relating to the double liability of stockholders and its enforcement, with the interpretation placed upon those provisions by the Supreme

> Court of that state, and also made the claim that § 1, Art. IV. of the Constitution of the United States and § 905, Rev. Stat., required the courts of Wisconsin to give such faith and credit to those proceedings and provisions as they have by law or usage in the courts of Minnesota.
>
> "Demurrers to the complaints were sustained upon the ground that to permit the actions to be maintained in the Wisconsin courts would be contrary to the settled policy of that state in respect of the enforcement of the like liability of stockholders in its own corporations, and judgments of dismissal were entered accordingly. The judgments were affirmed by the Supreme Court of the state, 136 Wisconsin, 589 and 594, and the receiver sued out these writs of error, alleging that he had been denied a right asserted, as before indicated, under the Constitution and laws of the United States.
>
> "Of course, we must look to the Minnesota constitution, statutes and decisions to determine the nature and extent of the liability in question, and the effect given in that state to the laws and judicial proceedings therein looking to its enforcement. . . .

The Court then examines these matters, and distinguishing *Hale* v. *Allinson*, 188 U. S. 56, and *Finney* v. *Guy*, 189 U. S. 335, both of which dealt with a different interpretation of an earlier Wisconsin statute, which limited the rights of a receiver in such cases to proceedings within the state of his appointment, concludes that under the Wisconsin act in question the receiver was authorized to sue in a foreign jurisdiction, and concludes:

> "In these circumstances we think the conclusion is unavoidable that the laws of Minnesota and the judicial proceedings in that state, upon which the receiver's title, authority and right to relief were grounded, and by which the stockholders were bound, were not accorded that faith and credit to

which they were entitled under the Constitution and laws of the United States."

MR. JUSTICE VAN DEVANTER in *Converse* v. *Hamilton*, 224 U. S. 243, 252, 253, 261.

"The defendant Selig in this action, brought by the receiver against him in the District Court in New York to recover the amount assessed, was not concluded with respect to his personal liability. He was free to deny that he was or had been a stockholder in the company . . . in short, to litigate any matter which bore upon the extent or duration of his stockholding or any other personal defence. . . ."

"But despite the transfer, Selig remained liable for the corporate debts previously incurred. . . . The basis of jurisdiction is the same in each case; it is found in the contractual obligation assumed in becoming a member of a Minnesota corporation, and in the consequent submission to the reasonable regulations of the state for the purpose of making the liability effectual. *Bernheimer* v. *Converse*, *supra*. It follows that if the Court, thus having jurisdiction and acting upon the evidence before it in the statutory proceeding, assessed former stockholders for the purpose of providing for debts incurred while they held their stock, its determination with respect to the amount of the assessment and the necessity therefor must be deemed conclusive. These questions cannot be reopened in another court when the receiver sues to collect the amount of the assessment. The stockholder in such a suit is free to urge his personal defenses but this does not mean that he may resist the receiver's demand upon the ground that the assessment was not needed."

MR. JUSTICE HUGHES in *Selig* v. *Hamilton*, 234 U. S. 652, 661, 662 (June 22, 1914).

"Inasmuch as that" (Minnesota) "court possessed exclusive jurisdiction of the subject matter and of

> the corporation, the judicial construction given by it to this section cannot be reinvestigated in our courts, and the judgments therein rendered might be deemed conclusive. . . . This decree is conclusive, even if entered without affording the defendant an opportunity to be heard personally."

Converse v. *Ayer*, 197 Mass. 443.

See, also,

Spargo v. *Converse*, 191 Fed. 823.
Converse v. *Mears*, 162 Fed. 767 (Wisc. 1908).
Hamilton v. *Simon*, 178 Fed. 130 (N. Y. 1910).
Hamilton v. *Levison*, 198 Fed. 444 (N. Y. 1911).
Hamilton v. *Selig*, 195 Fed. 153 (N. Y. 1912).

For an interesting case of a State court preserving "faith and credit" and at the same time evading the assessment, see

Converse v. *Stewart*, 105 App. Div. 478; 117 App. Div. 922; 192 N. Y. 578; 182 Fed. 941; 197 Fed. 152,

dismissed in this Court for lack of a federal question,

Converse v. *Stewart*, 218 U. S. 666.

See, also,

Converse v. *Ætna Nat. Bank*, 79 Conn. 163;
Converse v. *First Nat. Bank of Suffield*, 79 Conn. 603;

both reversed by this Court in a memorandum statement.

Converse v. *First Nat. Bank of Suffield*, 212 U. S. 567.

Similar light is shed upon the subject by

Converse v. *Hamilton*, 136 Wisc. 589.
Converse v. *McCauley*, 136 Wisc. 594.

Reversed by this Court in

Converse v. *Hamilton*, *supra*.

For another recent example of a similar enforcement of an Ohio judgment based upon an Ohio statute, see

Blackburn v. *Irvine*, 205 Fed. 217, 227 (C. C. A. Third Circuit, 1913), affirming s. c. 198 Fed. 360 (Penn. 1912).
Irvine v. *Elliot*, 203 Fed. 105 (Delaware, 1913).
Irvine v. *Putnam*, 190 Fed. 321 (N. Y. 1911).
Irvine v. *Bankard*, 181 Fed. 206 (Md. 1910).
Irvine v. *Putnam*, 167 Fed. 174, 182 (Calif. 1909).
Goss v. *Carter*, 156 Fed. 746 (C. C. A., Fifth Circuit, 1907).
Shipman v. *Treadwell*, 200 N. Y. 472 (respecting the doctrine).
Shipman v. *Treadwell*, 208 N. Y. 404 (evading the assessment).

(*b*) THE BINDING FORCE OF SUCH JUDGMENTS IS RECOGNIZED EVERYWHERE, QUITE APART FROM THE CONSTITUTIONAL ASPECTS OF THE QUESTION.

In other words, the rule represents an administrative necessity, which must be recognized by all tribunals in any well regulated system of justice.

For example, in 1833, the Legislature of New South Wales provided that in certain cases a corporation might be sued in the name of its chairman. Judgment was recovered under this act against the Bank of Australia in the Supreme Court of New South Wales for nearly a million dollars, and thereafter suit was brought upon this judgment against an English shareholder in England who denied that he was bound by the foreign judgment, alleging that he was not at any time served with any process issuing out of said Supreme Court of New South Wales, nor did he ever have any knowledge or notice whatever of the proceedings "whereby the judgment so made and

pronounced was and is contrary to natural justice, and wholly inoperative and void against the defendant."

But the Queen's Bench held unanimously, the Chief Justice Lord Campbell delivering the opinion, that the defendant was bound by the act in question, since he was a shareholder in the bank, that there was no merit in the objection that the defendant was not served with process in the original action, and that the enforcement of such liability in England did not involve "anything at all repugnant to the law of England, or to the principles of natural justice."

Bank of Australia v. *Nias*, 16 Q. B. 717, 733, 734.

This case has been repeatedly followed by the English courts, and represents the present law of England. See to same effect,

Bank of Australia v. *Harding*, 9 C. B. 661; 19 L. J. C. P. 345 (unincorporated association).
Kelsall v. *Marshall*, 26 L. J. C. P. 19.
Copin v. *Adamson*, (1875–1876) 1 Ex. Div. 17.

"It is a well settled rule that a judgment rendered by a court of competent jurisdiction is conclusive, in the absence of fraud or collusion, against the parties to the suit, and against all persons represented by the parties; and it is also well settled that a corporation represents its stockholders in all matters within the scope of its corporate powers transacted in good faith by its officers. In action against a corporation by a creditor, the stockholders are represented by the corporation within this principle, and it follows that the judgment rendered against the corporation therein, if the Court has jurisdiction is conclusive upon the stockholders. . . . This principle applies to stockholders who are residents of other states."

3 Clark & Marshall Priv. Corps. § 800.
4 Thompson on Corporations (2d ed.) §§ 4970 *et seq.*

(c) A JUDGMENT OF THIS KIND IS EQUALLY BINDING UPON STOCKHOLDERS WHEN IT IS IN FAVOR OF THE CORPORATION.

In most of the cases cited, the stockholder is bound by a judgment against the corporation. This happens only because the collection of assessments is so frequent in legal proceedings that a large majority of the cases covering this phase of the law arises in litigation of that sort. The principle, however, is the same in regard to other matters involved in the relationship between the corporation and its members, and has been recognized with equal clearness and invariably enforced where the facts have presented the problem in that form. We cite a few illustrative instances:

> "The practice had long been recognized of permitting suit to be brought by a few as the representatives of a numerous class, on behalf of themselves and all others of the class, when there is a common interest or a common right which the suit seeks to protect, and against a few as representing a numerous class subject to a common liability which the suit seeks to enforce. Story, Eq. Pl., § 97.
>
> "'In most, if not all, cases of this sort, the decree obtained upon such a bill will ordinarily be held binding upon all other persons standing in the same predicament, the court taking care that sufficient persons are before it, honestly, fairly and fully to ascertain and try the general right in contest. Story, Eq. Pl., § 120.'"
>
> "*From the very form and nature of these suits, each stockholder must be considered as represented, for if he is in sympathy with the complainant he may become a party complainant by application to the court; if he is in sympathy with the threatened action of the company, he is represented by and in the corporation which is a necessary party to the suit.*"
>
> *Willoughby* v. *Chicago Junction, etc., Co.*, 50 N. J. Eq. 656.

In the case of *Harmon* v. *The Auditor*, 123 Ill. 122 (5 Am. St. Rep. 502), referred to in the Willoughby case, *supra*, the town of Mount Morris voted to issue bonds in aid of a railroad company, and Pinckney, a taxpayer in the town, brought a bill in equity to prevent it. This suit was dismissed, and the bonds were issued. Subsequently Harmon, a second taxpayer, brought another suit to prevent the collection of taxes to pay interest on the bonds. The Court dismissed his bill, saying:

> "The Pinckney bill was filed by certain property owners and taxpayers as representatives of a class. . . . The present suit was begun by Harmon and others, also taxpayers and property owners of the town, as representatives of the same class for whose benefit the Pinckney bill was filed. The complainants in this proceeding were represented by the complainants in the former suit, and are, therefore, bound by the decree therein entered. The remedy, in suits of the character here indicated, is in the interest of the class of individuals having common rights that need protection, and, in the pursuit of that remedy, individuals have the right to represent the class to which they belong. This jurisdiction in some respects rests upon the principles of a proceeding *in rem*. We, therefore, think that there is sufficient identity between the parties filing the present bill and those who filed the bill in the Pinckney case to justify the pleading of the decree entered therein as *res adjudicata* in this case."

(*d*) The Enforcement of this Rule is a Matter of Strict Constitutional Right.

In the United States, this rule does not rest upon comity but upon the express requirements of the constitution.

Hancock Nat. Bank v. *Farnum*, 176 U. S. 640.

In that case, a citizen of Rhode Island held stock in a Kansas corporation. A creditor of the corporation recov-

ered judgment against it in Kansas which, under the law of Kansas, could be enforced against a stockholder in any court having jurisdiction over him. Accordingly, the Kansas creditor brought suit on this judgment in Rhode Island.

The trial court sustained a demurrer to the complaint, and the Supreme Court of the State affirmed its action, saying:

> "This action seems to enforce a liability against a stockholder which is not under our law. The statutes of a state do not operate beyond its own limits, and comity between states does not require that one state should enforce the statutory provisions of another state which are contrary to the policy of its own laws."
>
> *Hancock Nat. Bank* v. *Farnum*, 20 R. I. 466, 471.

This Court, speaking through MR. JUSTICE BREWER, replied:

> "The plaintiff's contention that these Federal provisions required a decision different from that made by the state court was distinctly presented and ruled against. . . . The jurisdiction, therefore, of this Court, is clear.
>
> " . . . He" (the stockholder) "is so far a part of the corporation that he is represented by it in the action against it . . .
>
> "This representative character of the corporation has been affirmed by this court in several cases. In *Hawkins* v. *Glenn*, 131 U. S. 319, it was held that 'in the absence of fraud, stockholders are bound by a decree against their corporation in respect to corporate matters, and such a decree is not open to collateral attack.' . . .
>
> "Now, as the judgment rendered in the Kansas court is in that State not only conclusive against the corporation but also binding upon the stockholder, it must, in order to have the same force and effect in other states of the Union, be adjudged in their courts

> to be binding upon him, and the only defences which he can make against it are those which he could make in the courts of Kansas. The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the act of Congress be secured. . . .
>
> "We are of the opinion, therefore, that the Supreme Court of Rhode Island has failed to give to the judgment in the Circuit Court of the United States for the District of Kansas that force and effect which it has within the limits of the State of Kansas, and that the failure so to do is an error available in this court."

In a somewhat similar manner, the Supreme Court of Wisconsin said:

> " . . . it is contrary to the policy of our laws to allow our citizens to be pursued in the manner there proposed, and that to permit our courts to be used as desired would inflict injustice upon our people, the protection of whom is the primary duty of our courts."
>
> *Hunt* v. *Whewell,* 122 Wisc. 33, 42.

In *Converse* v. *Hamilton,* 136 Wisc. 589, 591, the Supreme Court of Wisconsin most emphatically repeated this assertion, urging that the plaintiff's rights were dependent on a foreign statute which was contrary to the policy of Minnesota, and whose enforcement rested wholly on comity, and the counsel for the defendants urged with much emphasis in their brief before this Court that the Minnesota statute was contrary to the *lex fori,* and that

a reversal of the judgment in question "would compel a state court to entertain such action against its solemn declaration that by so doing it would subject its citizens to great and manifold injustice and hardship," that the matter was not one of "strict right," but to be allowed "only when the public policy of the sister state will permit." (Page 251.)

To this objection this Court, speaking through MR. JUSTICE VAN DEVANTER, replied:

> ". . . The subject to which c. 272 is addressed is peculiarly within the regulatory power of the State of Minnesota; *so much so that no other state properly can be said to have any public policy thereon.* And what the law of Wisconsin may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them is apart from the question under consideration."
>
> *Converse* v. *Hamilton*, 224 U. S., p. 260.

An interesting recognition of this requirement on the part of a state court is seen in *Mutual Fire Insurance Co.* v. *Phœnix Furniture Co.*, 108 Mich. 170. In that case the receivers of a Mutual Fire Insurance Co., incorporated under the laws of Illinois, brought suit to collect an assessment from a Michigan member of the company. The lower court held that the liability of the member was determined by the law of the domicile of the corporation. The Supreme Court of the state reversed this judgment, but later decided that it had made a mistake in doing so. The Court said:

> "GRANT, J. After a full argument upon the rehearing of this cause, we are satisfied that we were in error in reversing the judgment. . . .

"We held, in *Detroit, etc., Ins. Co.* v. *Merrill*, 101 Mich. 393, that the defendants, under such a note, were not liable to an assessment for unearned or return premiums. That case would, of course, control this, unless the decree of the Illinois court is conclusive upon the courts of this state. The Constitution of the United States declares that 'full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.' Article 4, § 1. In the early case of *Mills* v. *Duryee*, 7 Cranch, 481, it was held that the decrees and judgments of the courts of one state were conclusive in the courts of sister states. This case has since been uniformly followed. Where a court has jurisdiction of the cause and of the parties, its judgment is conclusive in other courts, and the only remedy is by direct proceeding in the original cause. *Hanley* v. *Donoghue*, 116 U. S. 4; *Cole* v. *Cunningham*, 133 U. S. 111; *Donesteel* v. *Todd*, 9 Mich. 371. It is conceded that as against the corporation itself, and the directors and officers thereof, the rule applies. It is, however, contended that it does not apply to a stockholder of such corporation who is not made a direct party to the original suit. That is the question in this case.

"We are not dealing with a case where a stockholder is interposing the defense of payment, or any other defense which was not passed upon in the original suit against the corporation. In such a case there is no judgment or decree of the court of a sister state which other courts must recognize. But the very point now urged as a defense was involved and determined by the Illinois court. . . . That court entered a decree, upon evidence placed before it, determining the amount of assets and debts, and the amount of the assessment necessary to liquidate its liabilities. If every stockholder may now contest this decree, the difficulty thus thrown in the way of an orderly and practical settlement of the affairs of the insolvent corporation is apparent. Different courts might adopt different rulings upon the amount of the assessment. We think the better doctrine is that each stockholder or member of the corporation is an

integral part thereof, and is represented in such suit through the corporation itself, and that such decree is binding and conclusive upon him. Two courts have so held in regard to the case now under consideration."

The Court refers to *Hawkins* v. *Glenn*, 131 U. S. 319, and other Federal cases, and holds that it is bound by the faith and credit clause of the Constitution to affirm the judgment which it had previously reversed.

> "If a judgment is conclusive in the state where rendered, it is conclusive here. The decree by which the assessment in question was made was undoubtedly conclusive on the members or policyholders of the defunct company, unless attacked in a direct proceeding, notwithstanding they were not present when it was rendered. . . . We can come to no other conclusion than that we are bound under the constitutional requirement of "full faith and credit," to hold that the decree making the assessment in question, being conclusive in Illinois upon all members and policy holders, unless attacked by direct proceeding, is conclusive here, and not open to collateral attack."

Parker v. *Stoughton Mill Co.*, 91 Wis. 174, 181.

See also:

Rand, McNally & Co. v. *Ins. Co.*, 58 Ill. App. 528.
Hammond v. *Knox*, 125 App. Div. 9.
Lycoming Fire Ins. Co. v. *Langley*, 62 Md. 196, 211.
Langworthy v. *Garding*, 74 Minn. 325.
Swing v. *Karges Furniture Co.*, 123 Mo. App. 367.

4. The judgment in the Reynolds case is a conclusive bar to the present action in the courts of Massachusetts.

If Mr. Green were to bring an action in Massachusetts to inquire into the validity of the changes of which he complains, the Reynolds judgment would not be mere

prima facie evidence of what the law was, but would itself be a conclusive bar,— a decision already rendered in his own case.

> "Every member of a corporation is so far privy in interest in a suit against the corporation that he is bound by a judgment against it."
>
> Shaw, C. J., in *Gaskell* v. *Dudley*, 47 Mass. (6 Metc.) 546, 550; 39 Am. Dec. 750.

See, also, to same effect:

2 Black on Judgments, § 504.

Holyoke Bank v. *Goodman Paper Mfg. Co.*, 63 Mass. (9 Cush.) 576.

Farnum v. *Ballard Vale Machine Shop*, 66 Mass. (12 Cush.) 507.

The fact that the Reynolds case was a bill in equity would not make it any less conclusive as a bar to an action at law involving the same matters between the same parties.

Foster v. *The Richard Busteed*, 100 Mass. 409; 1 Am. Rep. 125.

Mills v. *Gore*, 37 Mass. (20 Pick.) 28.

Bigelow v. *Winsor*, 67 Mass. (1 Gray) 299.

Blockinton v. *Blockinton*, 113 Mass. 231.

5. This judgment must have the same effect in the courts of New York as in Massachusetts.

If the judgment in the Reynolds case would be a bar to the present action in the courts of Massachusetts,— and we have shown that it would be,— then it must have the same effect here. This is elementary constitutional law.

Constitution United States, Art. IV., §1.

Revised Statutes U. S., § 905.

Hancock National Bank v. *Farnum*, 176 U. S. 640.

Cases cited above in this brief, page 105 *et seq.*

VI.

THE PROPER RECOGNITION OF THE LAW OF THE STATE OF THE DOMICILE OF THE CORPORATION IS AN ADMINISTRATIVE NECESSITY, AS WELL AS A CONSTITUTIONAL REQUIREMENT IN CASES LIKE THE PRESENT.

The wisdom and desirability of the constitutional requirement of "full faith and credit to the public acts" of every State, are illustrated and emphasized by a brief consideration of the practical aspects of the present situation.

1. The validity of the amended rate of assessment has been recognized and accepted everywhere except by the New York Court of Appeals.

Those changes have been carefully considered by several appellate courts, and with the exception of the present case have been invariably approved. This commendation may not have any particular technical application to the question before this Court, but the fact that the amendments have been recognized as fair and just, as well as legally binding, by practically every court which has carefully considered them, is a practical circumstance of very great importance.

2. A uniform rule of decision is an absolute necessity in matters of this kind.

The Court has before it a change adopted by a great association, controlling interests of the utmost importance to more than a million people and having branches in every state in the Union. This change was carefully considered by the representatives from each of these several states, and adopted by them by a vote of 106 to 3. The courts

of several states have asserted the justice and binding effect of the change. By what rule of orderly administration or common fairness can the plaintiff ask this Court to give him an advantage over the citizens of all these other states? There must be some settled rule in the case, aside from the independent judgment of every tribunal before which it is brought.

Suppose that the New York State court were to order the defendant to accept from 5,000 of its members in New York assessments at half the amended rate, which is about what the trial judge did in this case. The Supreme Judicial Court of Massachusetts has decided that the amended rate is binding upon all the members of the defendant. If a citizen of Massachusetts were to bring a bill in equity against the defendant for giving this great and unwarranted preference to its New York members, can there be any doubt of his right to a decree in his favor, and an injunction against the very act which the New York courts would have ordered? Such confusion and clashing has no right in any Federal system, and a line of reasoning that leads to any such result is wrong.

The New York Court of Appeals has expressed its opinion very clearly on this point:

> "It would scarcely be endurable if a railroad or insurance company declaring dividends in this State should be bound to pay stockholders in other states according to the foreign laws, and in accordance with different and varying codes."
>
> *Graham* v. *First National Bank*, 84 N. Y. 393.

In this respect, how does an assessment differ from a dividend?

Why would it be any more "scarcely endurable" in the case of an assessment levied in Massachusetts than in the case of a "dividend declared in this State?" See, also, com-

ments of the Circuit Court already quoted in regard to the present case, on pages 83 and 84 of this brief, *supra.*

In the case of *Canada Southern Rd. Co.* v. *Gebhard, supra,* the defendants were not members of the corporation, but were only bondholders. They were not, therefore, concluded by the Canadian law to the same extent as the shareholders. The Court, recognizing this objection, discussed it, and in the excerpt already quoted added:

> **" Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries."**

Does not "the true spirit of international comity," which in its vital features is made binding by the United States Constitution between the states, require at least as much recognition of the law of a sister state as the Supreme Court of the United States gave to the law of Canada in that case? How can rights arising under the law of any state be preserved, if they are not to be respected by the courts of other states?

3. The changes established by the Reynolds decision are in accordance with the public policy of New York, Massachusetts and most other states of the Union.

(*a*) The Legislative Policy of Both New York and Massachusetts have Followed the Line Established by the Reynolds Decision.

The great fundamental difficulty with fraternal organizations has been to make them conduct their affairs upon

a solvent, business basis. These great societies have been models of economy and honesty, but they have, in times past, generally failed to take into account the sound actuarial principles which must necessarily govern any successful effort to provide for given payments at an indefinite future time. The change here in question represents an honest, careful effort to effectuate this reform in the case of one of the largest of these societies.

This change was adopted in 1905. Since then twenty-eight states, including New York and Massachusetts, have required all fraternal organizations under their control to adapt their business to an actuarial standard, or in other words to do substantially what the Royal Arcanum did in making the changes in question.

It is impossible to overstate the economic and social importance of this legislation. It deserves to have the fullest possible legal effect given it by the courts. We collect the references in the margin.

Arizona, Rev. Stats. Tit. 24, §§ 3493, 3494. (Law 1913, c. 94, §§ 100, 101.)
Alabama, General Acts of 1911, pp. 713 ff. Act of April 24, 1911, §§ 23, 23*a*.
California, General Laws, c. 49, Act. 440, §§ 23, 23*a*. (Act of May 1, 1911.)
Colorado, Mills Stats. c. 65, §§ 3042, 3043. (Act of June 2, 1911.)
Connecticut, Public Acts of 1913, c. 185, §§ 33–42. (Act of June 7, 1913.)
Idaho, Session Laws, 1911, c. 225, § 23, 23*a*. Also Session Laws, 1913, c. 184.
Louisiana, Act No. 256 of 1912, § 23; Act No. 287 of 1914, §§ 1, 3.
Maryland, Laws 1912, c. 824, § 12*a* (applying only to new societies).
Massachusetts, St. 1911, c. 628, §§ 22, 23; St. 1913, c. 617, § 3.
Michigan, Public Acts 1913, No. 169, §§ 23, 23*a*, 23*b*.
Missouri, Laws 1911, p. 293, Act of March 30, 1911, §§ 25, 26.
Montana, Session Laws, 1911, c. 140, §§ 23, 23*a*.
New Hampshire, St. 1913, c. 122, §§ 23, 23*a*, 23*b*.
New York, L. 1911, c. 198, § 242.
North Carolina, Public Laws 1913, c. 89, §§ 20, 20*a*, 20*b*.
North Dakota, Laws 1913, c. 191, §§ 23, 23*a*, 23*b*.
Ohio, Laws 1911, pp. 542–544, Act of May 31st, §§ 23, 23*a*, 24, Code §§ 9484, 9485.
Oregon, General Laws 1911, c. 217, §§ 23, 23*a*.
Rhode Island, Public Laws 1912, c. 803, § 23, Public Laws of 1913, c. 958, § 2.
Tennessee, Acts of 1909, c. 99 (Permissive).
Texas, Laws of 1913, c. 113, §§ 23, 23*a*, 23*b*, 23*c*.

Still further and most impressive evidence of the fundamental necessity of such changes is given in the recent National Insurance Act of England, which requires the Friendly Societies of Great Britain to adopt substantially the same plan of actuarial computation as a basis for rates. The act defines "approved societies," prescribes actuarial valuation, and requires that in case of deficiencies in existing rates, the society shall

> "*provide for making good the deficiency, within a period of three years from the date at which the valuation was made in any one or more of the following ways:*
> (*i*) "*By a compulsory levy, by way of increase of the weekly rate of contributions upon members of the society or branch being insured persons.*"
>
> 1 & 2 Geo. V., c. 55, § 38 (b) (i).

In passing it is interesting to note as illustrating the attitude of the English courts on this general question the following typical cases:

> *Smith* v. *Galloway* (1898), 1 Q. B. 71.
> *Bradbury* v. *Wild* (1893), 1 Ch. 377.
> *Rosenburg* v. *Northumberland*, 22 Q. B. D. 373.
> *British Eq. Ass. Co.* v. *Bailey* (1906), 1 App. Cas. 35.

In New York this change was required by laws of 1911, c. 198, § 242, requiring that every society carrying on

---

Utah, Laws of 1911, c. 148, §§ 23, 23*a*.
Washington, Laws of 1911, pp. 290–2, c. 49, §§ 228, 229, Code 6059, 228, 229.
Wisconsin, 1913, c. 251.
Wyoming, Session Laws 1913, c. 127, §§ 23, 23*a*, 23*b*.
Substantially the same provision was recently adopted by the Legislature of Virginia, and will appear in the Virginia Acts of 1914, c. 229.
In Mississippi and South Carolina the same provisions requiring increased rates wherever necessary to maintain solvency have been put into effect by rulings of the insurance department.

business in New York shall make an actuarial valuation of its liabilities and income, such valuation to be based either on the National Fraternal Congress Table, or the table actually made and used by the Royal Arcanum in making the readjustment now under consideration. The act further provides that if this actuarial examination shows certain deficiencies then,

> "additional contribution, or additional, increased or extra rates of assessment shall be collected from the members to meet such deficiency."

See, also,
New York L. 1913, c. 410.
New York L. 1914, c. 203.

The Legislature of Massachusetts had adopted almost identical requirements.

> Massachusetts, St. 1911, c. 628, §§ 22, 23; St. 1913, c. 617, § 3.

This vast mass of statutory enactment represents an almost universal realization of the fact that it is absolutely necessary that these societies be made solvent. Explicit and definite requirements are made to compel the very change which the Royal Arcanum has made voluntarily, only to be enjoined by the courts of New York!

Anyone who is even slightly acquainted with the problem of promoting foresight and thrift, or of inducing large bodies of men to increase their payments for future needs can appreciate the tremendous struggle and agitation which has been required to accomplish this greatly needed reform. In view of its social importance and economic necessity, it is difficult to accurately characterize the grievous error made by any court which goes out of its way to enjoin so valuable a movement!

(*b*) ADMINISTRATIVE OFFICIALS HAVE INVARIABLY APPROVED THE CHANGES IN QUESTION.

We step outside the Record to quote a single illustration from the report of the public officer best qualified to judge the Royal Arcanum change at its true value,— the Insurance Commissioner of Massachusetts:

> "This whole subject of fraternal insurance cost is brought freshly to the public mind by the violent agitation now in evidence over the attempt of the Royal Arcanum, another Massachusetts corporation, to make a change in its rates. This great Order, with a magnificent membership of upwards of 300,000, was chartered in 1877. It has paid already in benefits upwards of $94,000,000. It has lodges in nearly every state in the Union. Many able men are connected with it, and it is an undisputed fact that its business has been conducted at a minimum of expense. But this Order, like others less strong and illustrious, was started on an inadequate basis of rates for furnishing whole life insurance, which its members seemed to think they were getting. In 1898 a partial remedy was applied by the adoption of the by-law increasing the amount to be collected from each member. There was no scientific adjustment of rates, however, according to age. This, together with the great increase in membership, resulted for a few years in producing a larger income than the outgo. Last year, however, the outgo overtook the income, and the claims incurred exceeded the collections to meet them by about $300,000. The officers of the Order, in common with all other intelligent people who had given the subject any thought, had foreseen that this would take place. A grave responsibility was upon them. Should they sit with folded hands and see the institution gradually decline, as others under similar circumstances had done before? They did not so look upon their duty. Two years ago they began to investigate and collect facts. Then they formulated what seemed to them the best plans for the perpetuation of the Order, and reported those plans to the

meeting of the supreme body in May last. They were adopted almost unanimously, to take effect upon new members July 1 next, and upon old members on October 1.

"This department has no duty as to approval of the new rates, and does not express any opinion as to whether the options presented are the best which could be devised. The commissioner does desire, however, in these comments, to make it evident that he believes in the necessity of a change, and that the governing body was in duty bound to take some action, which action, it goes without saying, should not repeat the mistakes of the past.

"The promulgation of the plan was followed by a great uproar, because the members were put upon the rate at attained age, thus requiring the older ones to pay for their insurance themselves instead of having younger members pay a part of it for them. They seem to think that the fact that they have been receiving something for less than cost in the past is a reason why they should have it on the same terms in the future, and that it is the duty of somebody else to pay the deficiency, forgetting, apparently, that it is not fair to burden the young man, just beginning his business career, and at the same time seeking to protect his family, with the insurance cost of the old men, many of them with abundant means, while the certificates of others are being carried as a speculation."

50 Mass. Life, &c., Insurance Report, xiii, xiv.

Even the trial court, in the record before the Court, bears somewhat unwilling witness to the improvement wrought by these changes. He carefully modifies the requests for findings of fact, but none the less finally admits that the modified rates "represent the actual cost to the Order for the benefits promised to members of each age," and "equitably apportion among the members their contributions to the Benefit Fund taking into con-

sideration age and risk"; that these rates "will maintain solvency" and that under these rates "the Royal Arcanum can continue to pay the maximum face value of its certificates at their maturity." (Findings 38, 39, 43, 55 and 56; Record, pages 33–36; fols. 66, 67, 68.)

4. This case presents a great opportunity to this court to render real public service.

No one can question the right of this Court to pass upon this case, because the faith and credit clause of the Federal constitution is clearly involved with it. This clear and indeed unavoidable jurisdiction affords the court an opportunity for a public service of the highest character.

It is impossible to overestimate the importance of the fraternal system of the United States. It is as essential to the welfare of the several states as the savings banks. Its outstanding obligations are greater, and through it each year, the American people spend a vast sum for the most worthy and fundamentally useful purposes.

The weak spot in this system has been its lack of financial stability. Aiming to render certain services at cost, it has almost invariably undertaken to render them for less than cost, with disastrous results to everyone concerned. During the past ten years a vast reformation has been in progress throughout the entire system. Under the leadership of the Fraternal Congress, a standard mortality table has been adopted in nearly all the states of the Union, and with the assistance and cooperation of the insurance commissioners of the different states, a steady effort has been made to induce these societies to bring up their rates to the figures which theory and experience have both shown to be necessary for the honest and solvent conduct of their business, and the fulfillment of outstanding promises.

The facts set out in the record before this court show

how essential such readjustments are. As the Supreme Court of Massachusetts well said on careful examination of substantially the same record:

> **"From the facts agreed it is plain that a great corporation, managing and controlling important financial interests for hundreds of thousands of families, was conducting its business upon unsound principles, which, if followed without change, would ultimately lead to financial ruin. Plainly the statute contemplates that such corporations shall have power to establish by their by-laws a system of giving death benefits which shall be sound and equitable, and founded on principles which can reasonably be expected to furnish proper security for the performance of their contracts with members. . . . If now they are called upon to pay for future insurance no more than its costs to the corporation, they ought not to think it unjust." (Chief Justice Knowlton in Reynolds *v.* Royal Arcanum, *supra.*)**

In a word, these readjustments, of which this is one of the first, are essentially just, and economically necessary. They are authorized and required by statute law. The crux of the whole matter is to secure uniformity of operation throughout the several states of the Union for corporate action, taken by the majority of such societies to make these absolutely necessary modifications in their assessment rates. In no possible case is there a stronger argument on the ground of public policy, and as has been pointed out by an honored member of this Court, public policy is no slight factor in the ultimate determination of the law.

> **"In substance the growth of the law is legislative. . . . The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally**

to be sure, under our practice and conditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less traceable to views of public policy in the last analysis."

Mr. Justice Holmes, the Common Law, p. 35.

This case offers an opportunity to apply old and well-settled principles to a field new in the adjudications of this Court, so that a subject of vital importance to the life of the whole nation may be saved from a chaos of clashing judgments and decrees, and be regulated — to use one of the noblest phrases in the recent history of this Court — "by the light of reason, guided by the principles of law." (MR. CHIEF JUSTICE WHITE, in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 64.)

The plaintiff in error is not asking any new thing. It seeks that the courts of New York be required to construe this contract as the Order and its members have construed it in practical dealings between themselves for more than thirty years,— indeed as Mr. Green himself construed it in 1898, as appears by his complaint in this very case. (Complaint, par. 6; Record, p. 4, fol. 6.) The sound and well established principle which the court has always followed in the construction of contracts in matters coming under its original jurisdiction is equally applicable to the case.

> "Generally speaking, a practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling influence."
>
> *Old Colony Trust Co.* v. *Omaha*, 230 U. S. 118, and cases cited. (See, also, pp. 42, 43, *supra*.)

This Court has never hesitated to use its great power for the maintenance of solvency and the discouragement

of all the forms of repudiation. The merest reference to the long line of tax and bond cases and many phases of the vast system of judicature which has grown up around the impairment of contract clause, is sufficient to recall more than a hundred years of steady emphasis upon the invariable sacredness and inflexible inviolability of obligations deliberately assumed for the future payment of money.

In no place has this obligation been more clearly recognized than where the future payment took the form of a joint undertaking to indemnify others against certain forms of loss. Two typical cases, one from the beginning, and the other near the end of our present series of decisions indicate clearly the constant attitude of the court, and state the doctrine which the plaintiff in error seeks to have applied to this case.

The first of these states in the briefest and most concise form the relationship between the member and the corporation, who are "insurer and insured," and all bound to "submit to this obligation" to make their payment equal to their liability.

> *Korn* v. *Mutual Assurance Soc.*, 6 Cranch, 192; 7 Cranch, 396 (*supra*, pp. 67, 68 of this brief).

Even more impressively in our own day this court has placed the seal of its approval on amendments similar in their general nature to those here in question, but much more radical in effect.

> "Where the right of amendment is reserved in the statute or articles of association, it is because the right to make changes which the business may require is recognized, and the exercise of the privileges may be vested in the controlling body of the corporation. In such cases, where there is an exercise of the power in good faith, which does not change the essential character of the business, but authorizes its extension upon a modified plan, both reason and authority support the corporation in the exercise of the right.

> . . . There was no contract that the plan of insurance should never be changed. On the contrary, it was recognized that amendments might be necessary. There was no vested right to a continuation of a plan of insurance which experience might demonstrate would result disastrously to the company and its members. . . . The courts are slow to interfere with the management of societies such as this mutual insurance company. While the rights of members will be protected against arbitrary action, such organizations will ordinarily be left to their own methods of action and management."
>
> MR. JUSTICE DAY in *Wright* v. *Minnesota Mutual Life Ins. Co.*, 193 U. S. 657 (affirming *Iverson* v. *Minnesota Mut. Life Ins. Co.*, 137 Fed. Rep. 268).

The amendments here in question were lawfully adopted by an overwhelming majority of the Order, after most careful consideration and in an earnest effort to do justice, secure solvency, and promote the common welfare. The decision so made has been ratified and confirmed by the Public Acts and Judicial Proceedings of the State peculiarly authorized to pass upon the matter. It is a matter of life and death with this Order that these changes should be treated alike in every state where its members live. It can appeal only to this Court to secure for these changes —thus ratified by the court and Legislature of its home state — the full faith and credit to which they are entitled by the Constitution of the United States.

Respectfully submitted,

HOWARD C. WIGGINS,
Attorney for Plaintiff in Error.

CURTIS H. WATERMAN,
JOHN HASKELL BUTLER,
W. HOLT APGAR,
JOSEPH A. LANGFITT,
of Counsel.

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No. [illegible]

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SUPREME COURT OF THE UNITED STATES

In Error to the Supreme Court of the State of New York.

SUPREME COUNCIL OF THE ROYAL ARCANUM and another,

Plaintiffs-in-Error,

vs.

SAMUEL GREEN,

Defendant-in-Error.

Notice and Brief on Motion to Dismiss Writ of Error and to Affirm Judgment.

F. J. Mosher,
Of Counsel for Samuel Green, Defendant-in-Error,
561 Seventy-third Street,
Brooklyn, N. Y.

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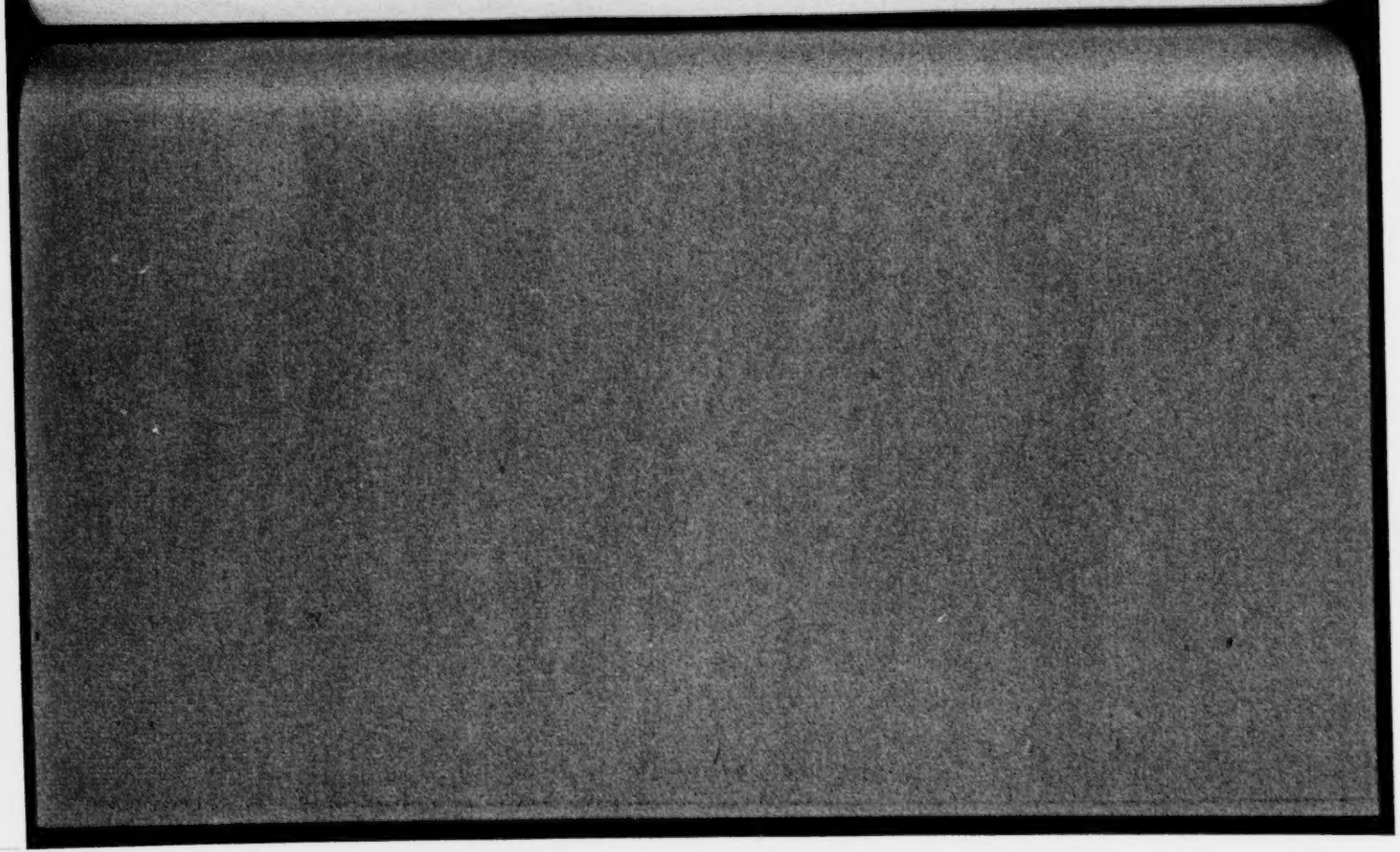

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Supreme Court of the United States

SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ as Regent of De Witt Clinton Council No. 419 of the Royal Arcanum, Plaintiffs-in-error, vs. SAMUEL GREEN, Defendant-in-error.	Notice of Motion.

Comes now the defendant-in-error, Samuel Green, and moves the Court to dismiss the writ of error in this case for want of jurisdiction because the Supreme Court of the State of New York to which said writ of error was directed had under the laws of the State of New York entered the judgment complained of under and in pursuance of a decision of the Court of Appeals of the State of New York which directed the said Supreme Court to enter a judgment in pursuance with such decision. And that such decision and judgment thereon is not appealable to this Court on the ground that the same does not violate any law of the United States or the clauses of any treaty thereof nor any clause or provision of its Constitution but is declaratory, construes and decides the terms and effect of a contract made by the plaintiffs-in-error with the

defendant-in-error a resident of the State of New York within said State of New York and subject to the laws of said State of New York, or if the writ of error shall not be dismissed that the judgment of said Supreme Court be affirmed on the ground that although in the opinion of this Court the record may show that this Court has jurisdiction, that it is manifest that the said writ of error was taken for delay only and that the question upon which the jurisdiction depends is so frivolous as not to need further argument.

F. J. MOISSEN,
Counsel for Samuel Green, defendant-in-error, for the purposes of this motion.

To

Howard C. Wiggins, Esq.,
Attorney for Plaintiffs-in-error.

Sir:

Please take notice that on the 14th day of April, A. D., 1913, the motion (notice of which the foregoing is a copy) will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Annexed hereto is a copy of my brief or argument in support of said motion.

F. J. MOISSEN,
of Counsel for defendant-in-error
for the purposes of this motion,
561 73rd Street,
Brooklyn, New York.

BRIEF.

Synopsis of the Case.

In the month of May, 1883, the defendant-in-error made application to and was duly admitted as a member of the plaintiff-in-error, De Witt Clinton Council No. 419 of the Royal Arcanum, which was and is a subordinate council of the other plaintiff-in-error, Supreme Council of the Royal Arcanum, a corporation organized under the laws of the State of Massachusetts and which is a Fraternal Benefit Association whose main object is to furnish to its members fraternal insurance upon the payment by such members of assessments according to age upon a scale forming a part of the by-laws of said corporation.

That the plaintiff-in-error, De Witt Clinton Council, was at that time an unincorporated association existing under the laws of the State of New York and carrying on its business in the (then city now) Borough of Brooklyn, County of Kings and State of New York.

That at the time the defendant-in-error was admitted as a member of the organizations aforesaid it was provided in the by-laws of said association that a person becoming such member should pay assessments to be applied solely to the purposes of such insurance according to a scale then set forth in said by-laws which provided that the assessment to be paid by a member who when admitted was of the age of defendant-in-error, viz: between 37 and 38 years, should be $1.86 upon each and every assessment and that upon such payment during his life, upon the decease of said member his beneficiary would receive the sum of $3000. It being also provided by said by-laws **that the amount of said assessments**

should remain the same whilst such person should remain a member of the order.

That by and with the consent of the defendant-in-error in the year 1898 the above mentioned by-laws were amended by a change in the amount of the assessment, the same being fixed thereafter at the sum of $3.16, payable monthly.

That in the year 1905, without the consent of the defendant-in-error, the plaintiff-in-error again amended the by-laws by changing the rates of assessments by which change the defendant-in-error was required to pay $6.87 upon each assessment, which change defendant-in-error objected to but paid under protest from the month of October, 1905, until February, 1910, such payments being made by him also under the threat contained in such by-laws, that unless so made he would be suspended as a member of said organization and lose the benefit of the moneys he had theretofore paid amounting to a large sum of money and also a consequent loss to his beneficiary of the amount of money to be paid unto such beneficiary upon the decease of defendant-in-error.

That in the month of February, 1910, defendant-in-error tendered to the plaintiffs-in-error the sum of $3.16 for the assessment then due which was refused and the sum of $6.87 demanded with a threat of suspension unless the same was paid.

Thereupon the defendant-in-error brought this action in the Supreme Court of the State of New York upon the above facts claiming a violation of his contract with them, the plaintiffs-in-error, and asking judgment of that Court in construing the above mentioned contract and to enjoin them from its violation.

The plaintiffs-in-error in that action did not deny the above facts but alleged as a defence that being a Massachusetts Corporation they were doing business under the laws of Massachusetts and that the laws of Massachusetts provided that they might amend their rates of assessments which they had done. And then set up as a plea in bar a judgment in the Courts of Massachusetts in a stockholders or class action brought by 16 persons claiming to be members of said Royal Arcanum and upon the **ultra vires** claiming the lack of power to amend the by-laws relative to assessments, which action was by the Supreme Court of Massachusetts decided in favor of the Supreme Council, defendant-in-error, but nowhere did it appear that the plaintiff-in-error knew of such action, or became or was a party plaintiff therein or sanctioned the same in any manner.

The issues in the action by the defendant-in-error were brought to trial before Mr. Justice William J. Kelly at a Special Term of the Supreme Court of the State of New York in the County of Kings in said State.

Upon the trial of said action during the examination of a witness the plaintiff-in-error offered in evidenced two Statutes of Massachusetts passed in the year 1902, which statutes were admitted in evidence, then they offered the judgment roll in the action brought in the Supreme Court of Massachusetts, which being objected to was refused to be admitted as evidence.

The case was submitted to Mr. Justice Kelly for decision and on the 23rd day of July, 1910, the justice rendered his decision in favor of the plaintiff in that action (the defendant-in-error herein); he also made his findings in writing, a copy whereof is hereunto annexed marked A, as also the testimony upon which

such statutes and judgment roll were offered in evidence marked B.

The plaintiffs-in-error thereupon appealed from such judgment to the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department which Appellate Division reversed the judgment rendered by Mr. Justice Kelly.

Thereupon the defendant-in-error appealed to the Court of Appeals of the State of New York from the order of reversal of the Appellate Division and the Court of Appeals rendered its decision reversing the order of the Appellate Division and affirming the judgment of Mr. Justice Kelly at Special Term.

A copy of the opinion of the Court of Appeals upon such reversal is hereunto annexed marked C.

Points Claimed and Raised by the Defendant-in-Error Upon the Appeal to This Court by the Plaintiff-in-Error.

First Point: That the contract having been made in the State of New York to be carried out in that State must be construed by and under the laws of the State of New York.

Second Point: The laws and judgment of a State offered in evidence in another State must be proven as a fact.

Third Point: No Federal question is raised unless presented in the Court below for decision.

Fourth Point: If the Federal question raised lacks merit it is not available and the writ of error should be dismissed.

Fifth Point: Upon the law and facts presented the appeal herein is frivolous and taken for delay, etc., and appeal should be dismissed and judgment below affirmed.

FIRST POINT.

The contract between the parties was made in the State of New York, and was to be carried out in the State of New York; it must therefore be carried out under the laws of the State of New York, and the laws of Massachusetts and decisions of that State have no application.

Mr. Justice Kelly, the trial judge, in his decision as shown above, held as a matter of fact that the contract in this action **"in all its essentials between the parties was entered into, made and completed in the State of New York" (Finding XXI).**

Therefore under the rulings made by this Court, the Courts of the State of New York, and even of the State of Massachusetts the matters in controversy herein must be governed by the laws and public policy of the State of New York.

Equitable Life v. Clements, 140 U. S., 226-232.
Coghlin v. South Carolina, 142 U. S., 101-111.
London Assn v. Companhia, &c., 167 U. S., 149, 161-151.
Mutual Life, &c. v. Hill, 193 U. S., 551.
Knights Templar v. Jarman, 187 U. S., 197.
Bottomley v. Mutual Life, 170 Mass., 274-277.
Millard v. Brayton, 177 Mass., '533.
Johnson v. Mutual Life, &c., 180 Mass., p. 407.
Carnegie v. Morrison, 43 Mass. (2 Met.), 381-397.
Meyer v. Knights, &c., 178 N. Y., 63, 71.

Langan v. Supreme Council, 174 N. Y., 266.
Supreme Council v. Getz, 112 Fed. R., 110.
Gibbs v. Queens Ins., 63 N. Y., 114.
LaFayette Ins. Co. v. French, 18 How., U. S., 404-408.
Met. Life, etc. v. Cohan, 179 U. S., 262, 264-265.

The finding of fact by the Court below that the contract, etc., was made in the State of New York, etc., is by the decisions of this Court not reviewable on writ of error to it, and is binding upon this Court.

Clipper Mfg. Co. v. Eli Mfg. Co., 194 U. S., 220-222, and cases there cited.
Adams v. Church, 193 U. S., 510-513.

SECOND POINT.

To give full faith and credit to a judgment rendered by the Court of any State in another State and its effect—the law of the State in which such judgment was rendered must be proven—and none was proven in this case.

Whenever it becomes necessary in order to give full faith and credit to a judgment rendered in another State to ascertain the effect which it has in that State, the law of that State must be proved like any other matter of fact.

Hanley v. Donoghue, 115 U. S., 1-5.
Chicago, etc. v. Wiggins, etc., 119 U. S., 615-624.

While statutes and decisions of other states are facts to be proved, yet when proved their construction and meaning are for the consideration and judgment of the Courts in which they have been proved.

Finney v. Guy, 189 U. S., 335-342.

And there must be a refusal by a State Court to give due effect to a final judgment of any Court of the United States **in a case between the same parties** to present a federal question which can be brought to this Court for review.

Giles v. Little, 134 U. S., 645-649.

If the contract between the plaintiff-in-error and defendant-in-error cannot be regarded as controlled by the law of Massachusetts, there is no foundation for the contention that full faith and credit were not given to the public acts and records of Massachusetts.

National Mutual B. & L. Assn. v. Brahan, 193 U. S., 635-647.

In so far as the rule that full faith and credit should be given to a statute of a state when offered in evidence in another state, applies in this case, the Court of Appeals has fully complied with the rule, as will be seen by reference to its opinion hereto annexed, which opinion questions such statutes passed by the Legislature of Massachusetts in the year 1902, as affecting a contract made in 1883, as amended in 1898, taken in connection with a part of such statutes (1902) providing that **any amendment to by-laws shall not take away or impair any remedy which may exist by law.**

THIRD POINT.

To raise a Federal question appealable to this Court the validity of the judgment or statute offered must be questioned and it must appear that the Federal question was presented for decision.

The objection in this case should have been made in the Trial Court and to be reviewable here the decision must be against the right so set up or claimed.

Spies v. Illinois, 123 U. S., 131-181.

If it appears that the New York Court **without questioning** the validity, **simply construed** a statute of Massachusetts **no federal question is presented.**

Glenn v. Garth, 147 U. S., 360.
Lloyd v. Matthews, 155 U. S., 222.
Banholzer v. N. Y. Life Ins. Co., 178 U. S., 402.
Johnson v. N. Y. Life Ins. Co., 187 U. S., 491.
Eastern Bldg, etc. Assn. v. Williamson, 189 U. S., 122-125.

To give jurisdiction to the U. S. Supreme Court to review a judgment of a State Court it must appear affirmatively upon the face of the record not only that a federal question was raised and presented to the highest court of a state for decision but that it was decided, or that its decision was necessary to the judgment or decree rendered in the case.

Murdock v. Memphis, 20 Wall, 590-636.
Choteau v. Gibson, 111 U. S., 200.
Detroit, etc. v. Guthard, 114 U. S., 133.

FOURTH POINT.

If the Federal question alleged to be raised by the record lacks merit the writ of error to this Court should be dismissed and where the question raised has been properly decided a motion to affirm should be granted.

It is the settled rule in this Court that where the Federal question asserted to be contained in a record is manifestly lacking all color of merit the writ of error must be dismissed (Swafford v. Templeton, 185 U. S., 487-493, and cases cited).

Wabash R'way Co. v. Flannigan, 192, U. S., 29-38.

Where a motion to affirm is united with a motion to dismiss for want of jurisdiction the practice in this Court has been to grant the motion to affirm when the question upon which the jurisdiction of the Court depends has been so manifestly decided right that the case ought not to be held for further argument.

Spies v. Illinois, 123 U. S., 131-169.

The right on which the party relies must have been called to the attention of the Court in some proper way and the decision of the Court must have been against the right claimed.

Or at all events it must appear from the record by clear and necessary intendment that the Federal question was directly involved so that the State Court could not have rendered judgment without deciding it.

It is equally well settled that if a decision of a State Court rests on an independent ground—one which does not necessarily include a determination of a Fed-

eral Statute—or upon a ground broad enough to sustain it without deciding the Federal question raised this Court has no jurisdiction to review the judgment of the State Court.

In every case which comes to this Court on writ of error or appeal the question of jurisdiction must first be answered whether propounded by counsel or not.

Giles v. Teasley, 193 U. S., 146-160.

This Court cannot review the decision of a State Court holding a contract valid or void when made upon the general principles by which Courts determine whether a consideration is good or bad on principles of public policy.

Chicago, etc. v. Wiggins, 119 U. S., 615-624.

Federal questions cannot be raised in this Court which were not raised below. (Chapin v. Fry, 179 U. S., 127.)

Winous Point Shooting Club v. Caspersen, 193 U. S., 189-191.

It appears distinctly on the face of the opinion of the Court of Appeals that the decision of the case was put and properly put on a ground which did not involve a federal question that may possibly have been presented by one of the several defenses set up by the answer; therefore this Court (U. S. Supreme Court) has no jurisdiction in error over the judgment.

Jacks v. Helena, 115 U. S., 288.

The cause of action is the subject-matter of the controversy and that is for all the purposes of the suit whatever the plaintiff declares it to be in his pleadings.

Southern R'way v. Carson, 194 U. S., 136-139.

But the judgment claimed by the plaintiffs-in-error not to have been duly considered by the Court below in its refusal to admit the same in evidence was not a judgment that could be pleaded as a defense to the cause of action of the defendant-in-error.

It is not contended nor was any proof offered that the defendant-in-error was a party to that action, and that fact was found by the trial Judge in his findings of fact (Finding XXV) and therefore the Courts of Massachusetts had not jurisdiction of the defendant-in-error he being a resident of the State of New York.

The judgment in Massachusetts without the presence of the defendant-in-error cannot be binding upon him upon the further ground that his contract and his rights thereunder are not governed by the laws of Massachusetts as we have already shown but by the laws of the State of New York.

Furthermore the action in Massachusetts having been brought upon the right *ultra vires* of the Corporation generally to amend its by-laws is not the same cause of action as the present action nor the claim in this the same as in that action. We claim that a judgment or decree set up as a bar by plea or relied on by way of estoppel to be conclusive must have been made: 1. By a Court of competent jurisdiction upon the same subject-matter. 2. Between the same parties. 3. For the same purpose.

Aspden v. Nixon, 45 U. S. (4 How.), 467-498.

It must contain: 1. Identity in the thing sued for. 2. Identity of the cause of action. 3. Identity of persons and parties to the action. 4. Identity of the quality in the persons for or against whom the claim is made.

Lyon v. Perin Co., 125 U. S., 699-700.

Furthermore the claim of the defendant-in-error is upon an individual contract between himself and the plaintiff-in-error and his action was based upon that—so that upon that cause of action in his absence from the Massachusetts Court, that Court could not have jurisdiction of the subject-matter of the present action—bearing in mind the fact that the action in Massachusetts was a class action, so claimed by the plaintiffs-in-error and described as a stockholder action —which could only raise the question of *ultra vires* as against the Corporation and of its corporate powers and rights, which is not the case in the present action which is only an action to determine the rights of the parties upon an individual contract between them, hence not the same cause of action.

Again the evidence shows that the action in Massachusetts was tried and decided upon an agreed state of facts between the parties to that action; therefore, it could and was not tried upon the merits, and if not tried on the merits the decision of the Court was binding upon no one excepting upon the immediate parties to that action.

The rules of evidence governing courts of justice are as adjudicated by the Courts of the State of New York as shown above, viz: That the Corporation (plaintiffs-in-error) cannot by an amendment to their by-laws affect the contract made long previous to such amendment. And in this we are borne out by the statutes of the State of Massachusetts as shown in the opinion of the Court of Appeals.

The Courts of the State of New York upon the question of Former Adjudication (*res adjudicata*) are the same as in this Supreme Court of the United States.

Standard, etc. v. Hubbell, 123 N. Y., 520-529.
Rudd v. Cornell, 171 N. Y., 114-127-129.

FIFTH POINT.

The record of the Court below shows that the action was decided by them solely upon the law in existence and applied in the State of New York upon like cases, and the Court of Appeals holding the contract between the parties (the subject of the action) to be a contract regulated by the laws of the State of New York having been made within and to be carried out in the State of New York, (which decision is in accordance with the decisions both of this Court and of the Courts of the State of Massachusetts and prior decisions in the State of New York) it follows that the evidence offered by the plaintiffs-in-error upon the trial of the Court below (of the above judgment roll and statutes)was absolutely immaterial, irrelevant and incompetent, and that in failing to apply such evidence to the matters on trial and in question, the Court below violated no law of the United States or clause or clauses of any treaty or of the Constitution of the United States as claimed by the plaintiffs-in-error.

That, therefore, the appeal herein by the plaintiffs-in-error is frivolous and taken merely for delay, being absolutely without legal foundation and that said writ of error should be

dismissed and the judgment appealed from affirmed.

Respectfully submitted.

F. J. MOISSEN,
Of Counsel for Defendant-in-error
for the purposes of this motion only.

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A.

Decision of the Court on Trial.

SUPREME COURT,

KINGS COUNTY.

SAMUEL GREEN,

against

SUPREME COUNCIL OF THE ROYAL ARCANUM, *et al.*

The above entitled action having been duly brought to trial before the undersigned, one of the justices of the Supreme Court of the State of New York, at a Special Term of said Court, held in and for the County of Kings, and the same having been submitted to me on the 9th day of July, 1910, and I having heard the proof and allegations of the parties, I do find the following:

Facts.

I. That the defendant Supreme Council of the Royal Arcanum is a corporation duly organized by and under the laws of the State of Massachusetts.

II. That said defendant Supreme Council, pursuant to the Laws of the State of New York, has been admitted by the duly constituted authorities of said State duly admitted to transact business in said State.

III. That the defendant DeWitt Clinton Council No. 419, of the Royal Arcanum, is a voluntary un-

incorporated association composed of upwards of One hundred members, duly organized by and under the Charter of said Supreme Council of the Royal Arcanum, and that the defendant Val M. Schmitz is the president thereof, under the name of Regent of said Council, and that said Council is doing buisness in the Borough of Brooklyn, County of Kings, in the State of New York.

IV. That the defendant Supreme Council of the Royal Arcanum is a fraternal beneficiary association, organized for the purpose of providing for the payment of benefits unto the beneficiaries of its members, in case of their death while such members.

V. That the business of said defendant is conducted on a lodge or council system, by and under its charter authorizing said Supreme Council to create or organize subordinate councils to be and act under its supervision and under its constitution and by-laws, and that the defendant DeWitt Clinton Council No. 419, of the Royal Arcanum, was organized as one of such subordinate councils and received a charter from such defendant Supreme Council, and did then and there, and has since that time, duly exercised the powers and performed the duties required of it by and under the constitution and by-laws of said Supreme Council and is still exercising and performing the same.

VI. That at the time of the application of the plaintiff hereinafter mentioned, it was provided in and by the constitution and by-laws of the defendant that upon the application of any person to become a member of the said DeWitt Clinton Council and of the performance by such person of the requirements mentioned and set forth in the constitution and by-laws of both of the defendants in this action, the person

so applying for such membership and admitted thereto became and was a member of both of the organiations of such defendants, and became subject to such constitution and by-laws then in existence.

VII. That at the time of the application of the plaintiff hereinafter mentioned it was provided in such constitution and by-laws that every person admitted a member of said defendants and being at the time of such admission of the age of thirty-seven years, should pay to the collector of his council the sum of One 80/100 dollars, upon each and every assessment which should or would be made by said Supreme Council for the purposes of and under the provisions of its constitution and by-laws of said Supreme Council, the same being upon the condition in such constitution and by-laws expressed that each and every member so paying such assessment should not only be entitled to any and all the benefits therein recited, but that such person designated by him as his beneficiary should receive upon the decease of such member the sum of Three thousand dollars.

VIII. That afterwards, and during the year 1898, the above mentioned assessment was by and with the consent and acquiesence of the plaintiff, and other members of said defendants, duly changed in that any person thereafter joining, or the member of said defendants, who had joined or become such member at the age of thirty-seven years, should pay once in each calendar month an assessment amount to the sum of Three 16/100 dollars, so long as he remained a member of said defendants, together with such extra assessments not exceeding such sum at any one time as might, under the provisions of the constitution and by-laws above mentioned, might be properly levied.

IX. And it is further provided in and by the constitution and by-laws of said defendants that upon the failure by any of the members of said defendants to pay over any of the above mentioned assessments within the time provided thereby, such member shall stand suspended from said defendants' organizations, and from any and all benefits to which he may be entitled to or his beneficiary by and under the provisions of the constitution and by-laws of the defendants hereinabove mentioned.

X. That after duly complying on his part with all the rules, requirements and regulations of the constitution and by-laws of the defendants, the plaintiff was received into and became a member of said defendants in or about the month of May, 1883, he then being of the age of thirty-seven years and is now a member of said defendants and entitled to any and all the benefits flowing therefrom.

XI. That in the year 1905, the defendant Supreme Council of the Royal Arcanum, without the consent of the plaintiff and without notice to him and in violation of his rights as a member thereof, changed the monthly assessments to be paid by him in each month, as above stated, to the sum of Six 87/100 dollars, to be paid in each month from and after the first day of October, 1905, and also providing that unless so paid that the plaintiff should be suspended as a member of such defendants and lose and be deprived as also his beneficiary, of any and all benefits he or his beneficiary might be entitled to under the provisions of the constitution and by-laws as previously existed and also lose and forfeit all moneys paid by him, said palintiff, since he became such member, amounting in the aggregate to a large sum of money.

XII. That the plaintiff duly objected to such change in his assessment, as above stated, he agreed to pay but that the defendants notwithstanding such fact, insisted upon such change and that the plaintiff, in ignorance of his rights under the law, and to preserve his rights as a member of said defendants, and intending to preserve his rights as they might exist, did pay unto said defendants the said sum of Six 87/100 dollars assessment, each and every month since the first day of October, 1905, reserving, however, by a notice in writing, any and all rights and privileges to which he might be entitled to under the laws of this State by reason of paying said increased assessments by and under the compulsion of said defendants and consequent duress in their threat of suspension of the plaintiff from the benefits he was or would be entitled to by and under the constitution and by-laws of said defendants.

XIII. That the plaintiff has duly offered to pay and tendered unto the defendant the sum of Three 16/100 dollars as his assessment for the month of February, 1910, by and under the amendments to the by-laws of the defendant, consented to by him in the year 1898, but that the defendants have utterly refused to accept the same and that unless he shall pay the above mentioned sum of Six 87/100 dollars on or before the 28th day of February, 1910, the plaintiff will be suspended as a member of said defendants and will lose all the moneys paid by him to such defendants and any and all the benefits accruing by and under the by-laws of the defendants.

XIV. That the above mentioned change in the amount of assessments to be paid by the plaintiff in the year 1905, is and was illegal and oppressive and was made in utter violation and disregard of the rights

of the plaintiff and of his contract with the defendants and that the plaintiff has no adequate remedy at law respecting the same.

XV. That the defendant Supreme Council has no general office in any Town or City of this State, and has not appointed any person within this State to receive process for it or upon whom process for it might be served, as provided by the laws of the State of New York, in such case made and provided.

XVI. That at the time of such alteration of the by-laws in the year 1905, hereinabove mentioned, the defendant, from the assessments received from its members since the year 1898, had in its possession or control an emergency fund amounting to the sum of over Two million dollars, in which fund the plaintiff herein was beneficially interested.

XVII. That defendant had right to call extra assessments, if necessary.

XVIII. That the assessments to be paid by plaintiff were at all times fixed as to amount, subject to be increased only by additional number.

XIX. That plaintiff could not avail himself of any opportunity to be heard at Supreme Council in opposition to change and no individual notice was given to attend.

XX. So far as plaintiff could be heard in Supreme Council, it was through the representatives from his State, and they unanimously opposed the change of rates.

XXI. That the contract in all its essentials between the parties, was entered into, made and completed in the State of New York.

XXII. That the enactment prescribing a three-year limitation was passed in the year 1892, seven years subsequent to the date of the defendants' contract with plaintiff.

XXIII. That defendant has accumulated a reserve or so-called emergency fund of about $6,000,000, obtained from assessments levied in excess of amount necessary to pay death claims.

XXIV. That the 60,000 members who have joined the order since October 1, 1895, are bound by the laws then in force and not those as existing prior.

XXV. That the case of Reynolds v. Supreme Council of the Royal Arcanum, in Massachusetts, was decided upon an agreed statement of facts and plaintiff was not directly or indirectly a party thereto.

XXVI. That the defendant Supreme Council of the Royal Arcanum is a fraternal beneficiary corporation, organized and existing under and pursuant to the laws of the Commonwealth of Massachusetts.

XXVII. That the defendant Supreme Council of the Royal Arcanum was organized on June 23rd, 1877, and that it was incorporated on November 5th, 1877.

XXVIII. That the Supreme Council of the Royal Arcanum, as shown by its charter, was incorporated for the purpose of fraternal union, aid to its members and their dependents, the education socially, morally and intellectually of its members, assisting the widows and orphans of deceased members, establishing a fund for the relief of sick and distressed members, and one for a widows' and orphans' benefit fund.

XXIX. That the objects of the Order of the Royal Arcanum, as stated in its by-laws, at the time when plaintiff became a member, were:

1st. To unite fraternally all white men of sound bodily health and good moral character, who are socially acceptable and between twenty-one and fifty-five years of age.

2nd. To give all moral and material aid in its power to its members and those dependent upon them.

3rd. To educate its members socially, morally, and intellectually; also to assist the widows and orphans of deceased members.

4th. To establish a fund for the relief of sick and distressed members.

5th. To establish a widows' and orphans' benefit fund, from which, on the satisfactory evidence of the death of a member of the order, who has complied with all its lawful requirements, a sum not exceeding three thousand dollars shall be paid to his family, or those dependent on him, as he may direct, and that the objects of the order, as stated in its by-laws, have continued without substantial change down to the present time.

XXX. That the business of the Supreme Council of the Royal Arcanum is conducted in accordance with the statutory law of Massachusetts, on the lodge system, said lodges being known as "Councils," and that said Supreme Council is the governing body thereof.

XXXI. That the subordinate lodges or councils which are composed of members of the Order of the Royal Arcanum, are all governed by the by-laws of said Supreme Council of the Royal Arcanum, and

that members are admitted to said subordinate lodges or councils upon application thereto, made in writing, and by initiation therein.

XXXII. That the moneys collected into the Widows' and Orphans' Benefit Fund are used to pay beneficiaries of deceased members and for no other purposes whatsoever, and have not been used for any other purpose whatsoever since the year 1883.

XXXIII. That the expenses of the defendant Supreme Council of the Royal Arcanum are borne by annual dues of 80¢ per member on the entire membership, by some profit from the sales of supplies, and by interest on such investment of its general fund as are accrued.

XXXIV. That the Supreme Council of the Royal Arcanum is not conducted for the profit of any person or persons.

XXXV. That the Order of the Royal Arcanum has a membership of about 245,000, and that its outstanding benefit certificates in the aggregate, amount to about $500,000,000.

XXXVI. That the amount collected annually into the Widows' and Orphans' Benefit Fund is about $8,000,000, and that this is collected by assessments from members.

XXXVII. That the number of assessments levied and collected from the commencement of the order, in 1877, down to and including the 31st day of December, 1909, were as follows, for each and every year:

1878	3	1888	14	1899	12
1879	7	1889	13	1900	12

1880	6	1890	15	1901	12
1881	8	1891	16	1902	12
1882	9	1892	15	1903	12
1883	10	1893	15	1904	12
1884	11	1894	16	1905	12
1885	11	1895	15	1906	12
1885	10	1896	16	1907	12
1886	12	1897	17	1908	12
1887	14	1898	15	1909	12

XXXVIII. That the defendant Supreme Council of the Royal Arcanum has paid out altogether, in death benefits, about $133,000,000.

XXXIX. That the membership of the Supreme Council of the Royal Arcanum is composed of its officers, representatives from Grand Councils, and of past Supreme Regents; that the representatives from said Grand Council to said Supreme Council are elected by the members of Grand Councils, and that said Grand Councils are composed of the officers thereof and representatives elected to said Grand Councils from the subordinate or local councils of the order.

XL. That the by-laws of the defendant Supreme Council of the Royal Arcanum, at all times during the plaintiff's membership, have contained full requirements for the use of regalia, jewels, uniform and ritual, and for the promotion of the social and fraternal features of the order.

XLI. That the defendant Supreme Council of the Royal Arcanum has been duly admitted, pursuant to the laws of the State of New York, to transact business in said State of New York.

XLII. That plaintiff, in or about the month of May, 1883, made application in writing to become a member of DeWitt Clinton Council No. 419, Royal Arcanum.

XLIII. That in and by the terms of said application, he agreed to make punctual payment of all dues and assessments for which he might become liable, and to conform in all respects to the laws, rules and usages of the Supreme Council of the Royal Arcanum, then in force, or which might be thereafter adopted by the same.

XLIV. That after said application plaintiff was duly initiated in said council and became a member thereof.

XLV. That in the obligation signed by plaintiff, on the 10th day of June, 1883, plaintiff solemnly promised that he would strictly comply with all laws, rules and usages of the fraternity established by the Supreme Council of the Royal Arcanum; that he would hold allegiance to said Supreme Council, and be loyal thereto as the supreme authority of the entire order, and that said obligation is attached to the application for membership hereinbefore mentioned.

XLVI. That thereafter, and on or about the 21st day of June, 1883, the defendant Supreme Council of the Royal Arcanum, issued to plaintiff a benefit certificate, wherein and whereby it was provided that, upon evidence received from DeWitt Clinton Council No. 419, of the Royal Arcanum, plaintiff was a contributor to the Widows' and Orphans' Benefit Fund of the order, and upon condition that he should comply, in the future, with the laws, rules and regulations then governing said Supreme Council and fund, or that might thereafter be enacted by the Supreme Council to govern said council and fund the Supreme

Council of the Royal Arcanum would pay out of its Widows' and Orphans' Benefit Fund to Louisa Green (wife), a sum not exceeding $3,000, upon satisfactory evidence of the death of plaintiff, upon the surrender of said certificate, and provided that plaintiff was in good standing in the order at the time of his death, and further provided that the said certificate should not have been surrendered by plaintiff and another certificate issued at his request, in accordance with the laws of the order.

XLVII. That at the time when plaintiff became a member of the order, it was provided in the by-laws that the defendant Supreme Council of the Royal Arcanum should be known as the "Supreme Council of the Royal Arcanum," with power to make its own constitution, rules of discipline and laws for the government of the whole order.

XLVIII. That at the time when plaintiff became a member of DeWitt Clinton Council, No. 419, Royal Arcanum, it was provided in the constitution and laws of the defendant Supreme Council of the Royal Arcanum, that the constitution of said Supreme Council and the laws governing the Widows' and Orphans' Benefit Fund might be amended by a three-fourths vote of the entire membership of said Supreme Council, at a regular meeting, or at a special meeting, called for the purpose.

XLIX. That from the time of plaintiff's reception into said DeWitt Clinton Council, he paid assessments at the rate of $1.87 per assessment, and continued to pay assessments at the same rate until the year 1898.

L. That prior to the year 1898, assessments were levied by the Supreme Council of the Royal Arcanum as deaths occurred.

LI. That the rates of assessment paid by members of the Royal Arcanum, upon a Three thousand dollar certificate, as and for their contribution to the Widows' and Orphans' Benefit Fund, at the time when the plaintiff became a member and down to 1898, were as follows:

Between the ages of 21 and 22	$1.00
" " " " 22 " 23	1.04
" " " " 23 " 24	1.08
" " " " 24 " 25	1.12
" " " " 25 " 26	1.16
" " " " 26 " 27	1.20
" " " " 27 " 28	1.24
" " " " 28 " 29	1.28
" " " " 29 " 30	1.32
" " " " 30 " 31	1.38
" " " " 31 " 32	1.44
" " " " 32 " 33	1.50
" " " " 33 " 34	1.56
" " " " 34 " 35	1.62
" " " " 35 " 36	1.68
" " " " 36 " 37	1.74
" " " " 37 " 38	1.80
" " " " 38 " 39	1.86
" " " " 39 " 40	1.96
" " " " 40 " 41	2.06
" " " " 41 " 42	2.16
" " " " 42 " 43	2.26
" " " " 43 " 44	2.36
" " " " 44 " 45	2.46
" " " " 45 " 46	2.58
" " " " 46 " 47	2.70
" " " " 47 " 48	2.82
" " " " 48 " 49	2.96

Between the ages of	49	"	50			3.10
" " " "	50	"	51			3.26
" " " "	51	"	52			3.42
" " " "	52	"	53			3.60
" " " "	53	"	54			3.80
" " " "	54	"	55			4.00

LII. That after the year 1898, assessments were made payable monthly.

LIII. That the rates of assessment paid by members of the Royal Arcanum, upon a Three thousand dollar certificate, as their contribution to the Widows' and Orphans' Benefit Fund, from the year 1896 to the year 1905, were as follows:

Between the age of:			Amount:
21	and	22	$1.76
22	"	23	1.82
23	"	24	1.90
24	"	25	1.96
25	"	26	2.04
26	"	27	2.10
27	"	28	2.18
28	"	29	2.24
29	"	30	2.32
30	"	31	2.42
31	"	32	2.52
32	"	33	2.62
33	"	34	2.74
34	"	35	2.84
35	"	36	2.94
36	"	37	3.04
37	"	38	3.16
38	"	39	3.26
39	"	40	3.44

40	"	41	3.60
41	"	42	3.78
42	"	43	3.96
43	"	44	4.14
44	"	45	4.30
45	"	46	4.52
46	"	47	4.72
47	"	48	4.94
48	"	49	5.19
49	"	50	5.42
50	"	51	5.70
51	"	52	5.98
52	"	53	6.30
53	"	54	6.56
54	"	55	7.00

LIV. That from the year 1898 to the year 1905, plaintiff paid monthly assessments of $3.16 each.

LV. That in the year 1905, a change was made by said Supreme Council of the Royal Arcanum in its assessment rates, and the assessment rate of plaintiff was changed from $3.16 to $6.87.

LVI. That prior to the year 1905, the question of a change of assessment rates was taken up by the executive committee of the Supreme Council of the Royal Arcanum, which consisted of eleven members, created pursuant to the laws of the Supreme Council of the Royal Arcanum; that William Francis Barnard, an insurance actuary, was consulted; that the statistics of the Royal Arcanum were submitted to him, and that from these statistics he formulated a table of rates; that at a regular meeting of the Supreme Council of the Royal Arcanum, in 1905, a re-

port was presented by the executive committee of that body, recommending the adoption of the rates of assessment formulated as aforesaid.

LVII. That upon said report there was a long discussion continuing four or five days.

LVIII. That said report and rates of assessment therein recommended and now in force, were adopted by a vote of about 102 to 3.

LIX. That the vote required at that time, under the laws, to amend the laws of said Supreme Council, was 77.

LX. That in the year 1903, there was prepared a tabulation of the experience of the order, which brought under consideration about 400,000 lives.

LXI. That this tabulation was submitted by the defendant Supreme Council of the Royal Arcanum to the said actuary William Francis Barnard.

LXII. That from said tabulation of experience, the said actuary, William Francis Barnard, prepared the rates of assessments adopted in 1905, as hereinbefore set forth.

LXIII. That such rates actually represent the actual cost to the order for the benefits promised to members of each age.

LXIV. That such rates of assessment, adopted in 1905, equitably apportion the cost of protection among the members of the order, according to age and risk.

LXV. That assuming that the future experience of the Royal Arcanum will be the same as that upon which the rates adopted in 1905 were based, said rates will provide sufficient revenues to maintain solvency

and enable the order to meet all maturing mortuary obligations through the future.

LXVI. That assuming that the experience of the Royal Arcanum is the same as that of the first twenty-seven years of its existence, then, if the members of the Royal Arcanum pay the amount of assessments fixed in the assessment tables adopted in 1905, the Royal Arcanum can continue to pay the maximum face value on its certificates at their maturity.

LXVII. That the assessment rates adopted by the Supreme Council of the Royal Arcanum in 1905, equitably apportion among the members their contributions to the Widows' and Orphans' Benefit Fund, taking into consideration age and risk.

LXVIII. That the rates of assessment adopted by the Supreme Council of the Royal Arcanum in the year 1905, for holders of a Three thousand dollar certificate, were:

Age:	Regular Rate	Option A:
21	$1.89	$2.43
22	1.92	2.49
23	1.95	2.58
24	1.98	2.67
25	2.01	2.76
26	2.04	2.85
27	2.07	2.97
28	2.10	3.06
29	2.13	3.18
30	2.16	3.30
31	2.22	3.39
32	2.28	3.51
33	2.34	3.63
34	2.40	3.75

35	2.49	3.90
36	2.58	4.08
37	2.67	4.26
38	2.79	4.44
39	2.91	4.62
40	2.03	4.83
41	3.18	5.04
42	3.33	5.28
43	3.48	5.49
44	3.63	5.73
45	3.78	6.00
46	3.93	6.24
47	4.11	6.54
48	4.29	6.84
49	4.47	7.20
50	4.65	7.56
51	4.83	7.95
52	5.04	8.34
53	5.25	8.73
54	5.46	9.09
55	5.67	9.42
56	5.88	9.72
57	6.09	10.23
58	6.33	10.77
59	6.57	11.34
60	6.87	11.97
61	7.23	12.63
62	7.65	13.35
63	8.10	14.16
64	8.64	15.06
65	16.08	16.08

LXIX. That subsequent to said regular meeting, and in the same year, a special session of the Supreme Council of the Royal Arcanum was called, owing to some dissatisfaction in the order.

LXX. That the call for this special session was published in a paper published by the order and mailed to all members of the order.

LXXI. That said special session lasted five or six days; that no other matters were taken up than the matter of rates, and that at said session these matters were discussed over again.

LXXII. That at said meeting, the rates adopted at the regular session in 1905, were re-affirmed, excepting one table, which was taken out, and that said table, so taken out, does not appear in the laws of 1905, as received in evidence in this action.

LXXIII. That at said special meeting of the Supreme Council, its deliberations and hearings were not confined to members of the Supreme Council itself; that members of the order were permitted to appear before said Supreme Council and express their views upon the question of rates of assessment.

LXXIV. That the amounts paid into the Widows' and Orphans' Benefit Fund by plaintiff were as follows, to wit: At his first rate $388.80; at his second rate $271.76, and at his third rate $370.98, making a total of $1,031.51.

LXXV. That a member of the Royal Arcanum may at any time, when in good standing, upon payment of the fee provided, make a written surrender of his benefit certificate and direct that a new certificate be issued to him, payable to such beneficiary or beneficiaries as such member may designate, according to the laws of the order.

LXXVI. That it is provided by the by-laws of the Supreme Council of the Royal Arcanum, that no ac-

tion at law or in equity in any Court shall be brought or maintained upon any cause or claim arising out of any membership or benefit certificate, unless such action is brought within three years from the time when such right of action accrues, and that said provision has been a part of said by-laws since 1892.

LXXVII. That by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment.

LXXVIII. That from the 1st day of October, 1905, to the 1st day of February, 1910, plaintiff paid assessments for the Widows' and Orphans' Benefit Fund, monthly, at the rate of $6.87 for each assessment.

LXXIX. That since the adoption of its amended assessment rates in 1905, the Royal Arcanum has received about 63,000 new members, and there have been reinstated into its membership about 5,000.

And I therefore find as

Conclusions of Law.

FIRST: That the plaintiff is entitled to a judgment in his favor against the defendants, to the effect that the contract by and between the plaintiff and the defendants is that the defendant Supreme Council of the Royal Arcanum shall, upon the decease of the plaintiff, pay the sum of Three thousand Dollars unto the person designated by the plaintiff as his beneficiary, providing the said plaintiff be then a member of said defendants.

SECOND: That the plaintiff shall pay unto the defendants the sum of $3.16/100 once in each month,

with such additional assessments as said sum or any be lawfully imposed, so long as he shall remain a member, as an assessment to the 'Widows' and Orphans' Benefit Fund, or such fund as may hereafter be provided by the by-laws of said defendants for the payment of said sum of Three thousand dollars above mentioned.

THIRD: That the defendants be adjudged and be directed to receive of and from the plaintiff the above mentioned sum of Three (3) (00 Dollars as his assessment upon his contract with the defendants, as a member thereof.

FOURTH: That the defendants be enjoined from expelling the plaintiff as a member of the defendants, upon the plaintiff paying or offering to pay the said sum of Three (3) (00 dollars for such assessment lawfully imposed, once in each calendar month, until he decease.

FIFTH: That the plaintiff recover of and from the defendants his costs and disbursements of this action.

Dated, Brooklyn, July 23rd, 1900.

WILLIAM J. GILLIS,

P.

B.

Testimony of Defendant's Witness, Curtis H. Waterman.

CURTIS H. WATERMAN, Arlington, Mass., called as a witness in behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. Powell:

I am an attorney and counsellor at law, admitted to practice at the bar of the State of Masachusetts. I have been a practitioner in that state nine years. I have with me the Revised Laws of the State of Massachusetts.

Mr. Powell: I offer in evidence Chapter 119 of the Laws of the Commonwealth of Massachusetts.

By the Court:

It refers to fraternal beneficiary corporations, the law that governs fraternal associations in Massachusetts. And this corporation is organized under the laws of Massachusetts, but doing business in the State of New York under permission of the superintendent of insurance of this state. It is Chapter 119 of the Revised Laws of Massachusetts. There is only one edition. This is volume one, edition of 1902, page 1168.

Same designated as Exhibit 1, but not marked.

By Mr. Powell:

Q. Now, Mr. Waterman, there are some other laws there which we wish to offer in evidence and will you kindly without my designating them turn to them? A. Chapter 109 Section 3 providing that the charters and by-laws of corporations shall remain subject at all times to subsequent modification by the Legislature of the State of Massachusetts.

Mr. Powell: I offer this in evidence.

By the Court:

Q. Have you indicated it in some way? A. Yes, Chapter 109 of the Revised Laws, Section 2—it is page 947, Volume One.

Same designated as Exhibit J, but not marked.

Mr. Powell: I offer in evidence a certified copy of the record in the suit of Stephen W. Reynolds and others against the Supreme Council of the Royal Arcanum, certified by the Supreme Judicial Court, Commonwealth of Massachusetts.

The Court: What is the object of that? It is not objected to, but I would like to know for my own information.

Mr. Powell: The object is to show exactly what the common law of the State of Massachussets is.

The Court: I do not think you can show it by the record in a particular case. Do you object to it?

Mr. Moissen: I do most decidedly, but I was waiting for him to get through.

Objection sustained.

Mr. Powell: One other suggestion. It is to show the construction of the Massachusetts Statutes by the Courts of Massachusetts.

The Court: You cannot show that by the record in a particular case. Every case depends on its own facts.

Mr. Powell: Then I will except to the rejection of the record and ask to have it marked for identification.

Same marked Exhibit K for identification.

Q. Under the law as decided by the courts of Massachusetts has the Royal Arcanum, the Supreme Council of the Royal Arcanum, power and authority to change its rates of assessment? A. Yes.

By the Court:

I am referring now to a reported case, Reynolds against the Supreme Council of the Royal Arcanum. It is reported in 192 of Massachusetts reports, at page 150, I believe.

By Mr. Powell:

The Supreme Judicial Court of the Commonwealth of Massachusetts is its court of highest authority. It is the court of last resort.

CROSS-EXAMINATION by Mr. Moissen:

I was connected with that case, the Reynolds case. That case was tried by the Court upon an agreed state of facts and a bill in chancery—virtually a bill in chancery and upon that agreed state of facts that decision was made.

The Court: Do you claim it was not a *bona fide* litigation?

Mr. Moissen: Why, certainly not. One of the decisions quoted there is relative absolutely to dues, and not to assessments.

Mr. Powell: Will your Honor permit me to renew the offer of Exhibit K for identification, upon the ground that it is competent, having been brought as a stockholders' action, for the benefit of all stockholders or all parties in interest, leaving out the word "stockholders," although your Honor understands what I mean by it, and therefore, having been brought for all

parties in interest it is binding upon all parties in interest, and for that purpose I renew the offer in evidence.

Objected to by Mr. Moissen.

Objection sustained. Exception taken.

Mr. Powell: Will your Honor permit one other suggestion on my part, and that is this: Our contention here is that this is admisible, furthermore, upon this ground that the contract between every one of these members, particularly as to his connection with the organization as one who contributes towards the Widows' and Orphans' Benefit Fund, in the management of the internal affairs of the corporation—that the contract consists of the application, the certificate, the laws of the order and the laws of the state from which the corporation takes its life, and that therefore the construction which the court where the corporation has its residence and life, of its own statute, as a part of the contract, becomes competent evidence in the case, and so I renew this offer of Exhibit K again, upon that ground.

The Court: The proposition of law which you advance is one with which we are all familiar, but I exclude the offer and give you an exception.

C.

Opinion of the Court of Appeals of the State of New York.

COURT OF APPEALS.

Decided, December 10, 1912.

SAMUEL GREEN,
Appellant,
v.
SUPREME COUNCIL OF ROYAL ARCANUM and VAL M. SCHMITZ, Regent of DeWitt Clinton Council No. 419 of the Royal Arcanum,
Respondents.

The plaintiff, holding a certificate of insurance in a mutual benefit association, agreed in his application to pay all dues and assessments "and to conform in all respects to the laws, rules and usages of the order now in force or which may hereafter be adopted by the same." His certificate was conditioned "that the said member complies, in the future, with the laws, rules and regulations now governing the said council and fund, or that may hereafter be enacted by the Supreme Council to govern said council and fund." The association some years after issuing the certificate, without notice to the plaintiff and against his protest, in-

creased his assessment. It was held that the language quoted did not authorize an increase.

Nor are the plaintiff's rights in such a case affected by the fact that the association was incorporated under the laws of a foreign state, whose statute gave to such associations power to amend their rate of assessment; the contract having been made in this state and the statute of the foreign state not having been enacted until after the certificate in question was issued, which statute also provided that an amendment should not impair any existing legal remedy.

Appeal from a judgment of the Appellate Division in the Second Department reversing on fact and law a judgment of the Special Term.

F. J. Moissen for appellants.
Howard C. Wiggins for respondents.

PER CURIAM—The defendant is a mutual benefit association organized under the laws of Massachusetts, and the plaintiff is one of its members by virtue of his membership in De Witt Clinton Council No. 419, which is a subordinate division of the association organized and existing within this state. The action is brought to obtain an adjudication of the rights of the parties under the contract between them. The plaintiff became a member of the defendant in 1883. He was then thirty-seven years of age, and the rate of assessment upon members of that age was then $1.80 for each death. In 1898, this rate was changed with the consent of the plaintiff to one assessment of $3.16 for each death, and such extra assessment, not

exceeding that amount at any one time, as might be properly levied under the constitution and by-laws. In 1905, the defendant again raised its rates and since then the members of the class to which the plaintiff belongs have each been assesed $6.87 every month until they reach the age of 65, at which time their assessments are automatically fixed at $16.08 per month for the remainder of life. This change in the rate of assessment in 1905, was made without notice to the plaintiff, without his consent and against his objection and protest. From 1905, until February, 1910, he paid under protest the rates as increased in 1905. Then in February, 1910, he tendered to the proper officer of the defendant the sum of $3.16, which was the amount of the monthly assesment as fixed with his consent in 1898. The defendant, through its officers, refused to accept the tender and threatened to expel the plaintiff unless he should pay the assessment of $6.87 as fixed in 1905. The plaintiff thereupon brought this action, claiming that the increase in 1905, of the rates of assessment was illegal and in violation of his rights under his contract of membership as modified by the changes made with his consent in 1898, and in this contention he was upheld by the court at Special Term. The Appellate Division took a different view, however, and decided that the defendant in its contract with the plaintiff had effectually reserved the right to bind him to the payment of the increased rate by its subsequent amendments of its by-laws. This conclusion was based upon the assumption that there is a distinction between this case and the cases in which we have held that a membership contract in a mutual benefit association, in which the member agrees to comply with the laws of the order "now in force or that may hereafter be adopted," does not authorize

a subsequent amendment of the by-laws without the member's consent if the effect of such amendment is to increase the rate of assessment or to reduce the amount of the benefit as fixed by the contract (Wright v. Knights of Maccabees, 196 N. Y., 391; Dowdall v. Supreme Council Cath. Mut. Ben. Ass'n, 196 *id.*, 405; Ayers v. Grand Lodge United Workmen, 188 *id.*, 280; Evans v. So. Tier Mas. R. Ass'n, 182 *id.*, 453; Beach v. Supreme Tent K. of M., 177 *id.*, N. Y., 100; Langan v. Supreme Council Am. L. of H., 174 *id.* 266; Shipman v. Protected Home Circle, 174 *id.*, 398; Weber v. Supreme Tent K. of M., 172 *id.*, 490).

We think there is no distinction between the case at bar and the cases cited. In the plaintiff's application he agreed to make punctual payments of all dues and assessments for which he should become liable, "and to conform in all respects to the laws, rules and usages of the order now in force *or which may hereafter be adopted by the same.*" The certificate issued to him by the defendant was conditioned, "that the said member complies in the future with the laws and regulations now governing the said council and fund, *or that may hereafter be enacted by the supreme council to govern said council and fund.*"

The learned justice who wrote for the Appellate Division in the case at bar thought that these reservations were so specific as to render them binding upon the plaintiff, but we cannot see wherein they differ from the reservations in Wright v. Knights of Maccabees (*supra*), Ayers v. Grand Lodge United Workmen (*supra*), Evans v. So. Tier Mas. R. Ass'n (*supra*) and the other cases in which the member had agreed to be bound by the laws then in force and by such as should thereafter be enacted. It was precisely this general form of reservation that was under considera-

tion in Beach v. Supreme Tent of K. of M. (*supra*), where Judge Cullen wrote for the Court: "It is quite easy for fraternal organizations, such as the defendant, if they deem the provisions for benefits to their members tentative only and desire to have them subject to such modifications as the business of the orders may require, to express that in the certificate. So in the present case, if the certificate had provided that the payments therein specified should be subject to such modification as to amount, terms and conditions of payment and contingencies in which the same were payable as the endowment laws of the order from time to time might provide, the amendments would be applicable to existing members. But I think that nothing less explicit than this appearing in the certificate itself should be effectual for such a purpose. Fairness to persons joining the order required such plain dealing" (p. 105).

The plaintiff's rights are not affected by the fact that the defendant is a corporation organized under the laws of Massachusetts, nor by the finding of the Trial Court "that by the statutory law or public acts of the Commonwealth of Massachusetts fraternal beneficiary organizations, of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rate of assessment," because (1) the Trial Court also found "that the contract in all its essentials between the parties was entered into, made and completed in the State of New York" and (2) the statute of

Massachusetts, under which the defendant claims the power to amend as to rates of assessment, was not enacted until 1902, and expressly provides that amendment, alteration or repeal shall not take away or impair any remedy which may exist by law.

Although the Appellate Division reversed the judgment entered at Special Term "upon questions of fact as well as of law," **it was conceded by counsel upon the argument that there are no disputed facts, and this concession accords with our view of the findings. The actual findings of fact are purely formal and beyond dispute,** and the rest, although classified as matters of fact, are really conclusions of law. We have therefore ignored the form of the judgment and have treated the record as presenting only a question of law.

The order of the Appellate Division must be reversed and the judgment of the Special Term affirmed, with costs to the plaintiff in all the courts.

Cullen, Ch. J., Gray, Haight, Vann, Werner, Chase and Collin, JJ., concur.

Order reversed, &c.

Reported in 206 N. Y., 591, Advance Sheets No. 628 January 11th, 1913.

Also in New York Law Journal, December 23, 1912.

No. 106

FILED
OCT 29 1914
JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1914.

SUPREME COUNCIL OF THE ROYAL ARCANUM *et al.*,

Plaintiffs-in-Error,

vs.

SAMUEL GREEN,

Defendant-in-Error.

Brief of Defendant-in-Error.

Docket No. 106.

F. J. Mouseen,
Attorney for Defendant-in-Error,
561 Seventy-Third Street,
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THE REPORTER CO., WALDEN, N. Y.
New York Office: 233 Broadway, Room 801. Phone 6618 Rector.
Brooklyn Office: 215 Pulton Street, Room 61. Phone 3243 Main.
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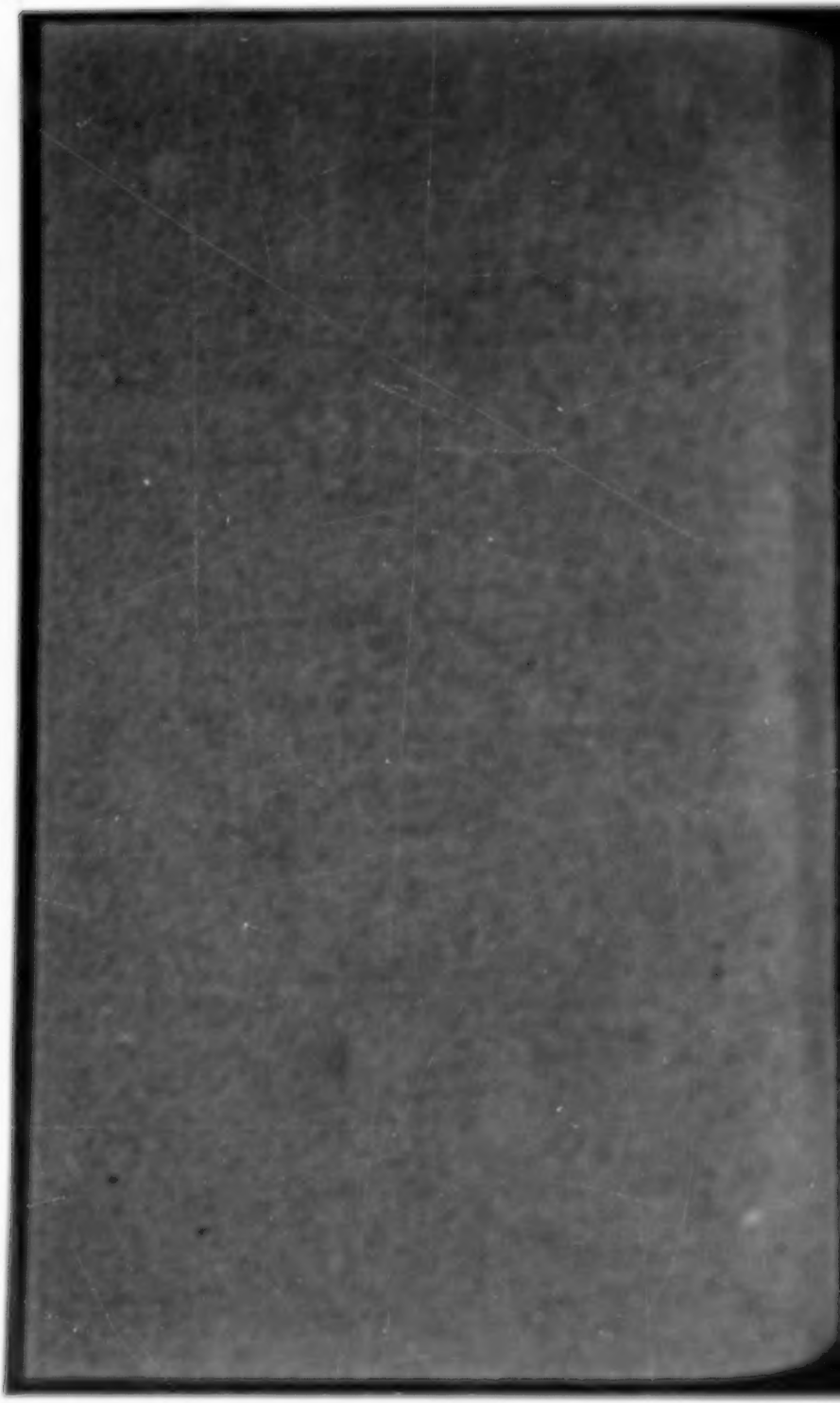

Supreme Court of the United States

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followed by the service of the answer of the plaintiff-in-error which was subsequently amended by them. Upon the issues thus joined *the action was tried before Hon. William J. Kelly, one of the justices of said Supreme Court,* without a jury on the 15th day of June, 1910, *who afterwards made his findings of fact* and rendered judgment thereon on the 23rd day of July, 1910, in favor of the defendant-in-error. Judgment was entered upon such findings on the same day. From this judgment an appeal was taken by the plaintiffs-in-error to the Appellate Division of said Supreme Court in and for the Second Department which Appellate Division after argument on the 19th day of May, 1911, reversed the judgment of Mr. Justice Kelly and ordered a new trial of the action. Judgment upon this order was entered on the 24th day of May, 1911. From this last mentioned judgment the defendant-in-error appealed to the Court of Appeals of the State of New York and that Court after argument on the 11th day of December, 1912, reversed the order of the Appellate Division and affirmed the judgment of Mr. Justice Kelly and remitted the action to the Supreme Court. On the 30th day of December, 1912, an order was made in said Supreme Court making the judgment of the Court of Appeals the judgment of the Supreme Court. Judgment upon said order was duly entered upon the same day.

The plaintiff-in-error thereupon applied to this Court on the 8th day of January, 1913, for a writ of error to the Supreme Court of the State of New York from the judgment entered upon the 30th day of December, 1912, upon a petition and assignment of errors and a writ of error was granted on the same day. *The certified record in this case was not in existence at the time of the application for the writ and was not filed therewith so that this Court in granting the writ*

of error must have relied entirely upon the truthfulness of the petition and assignment of errors presented to it by the plaintiffs-in-error.

Reference to the record will show that the certificate of the Clerk of the Supreme Court of the State of New York, certifying to its correctness, etc., is dated on the 16th day of January, 1913.

Synopsis of Facts.

The Court of Appeals in rendering its judgment delivered its written opinion (pp. 145, 146 and 147 of Record), in which it says (p. 147, fol. 337, Record): "Although the Appellate Division reversed the judgment entered at Special Term upon 'questions of fact as well as of law' *it was conceded by counsel upon the argument, that there are no disputed facts, and this concession accords with our view of the findings.*"

The facts referred to are stated in the findings of fact in the decision of the Trial Court forming the basis of its judgment (Decision, pp. 14 to 26, fols. 29 to 49, Record). The reading of that decision shows, as follows:

That the plaintiff (defendant-in-error), about the month of May, 1883, made application in writing to become a member of the DeWitt Clinton Council No. 419, Royal Arcanum (Finding XLII, fol. 38, p. 19, Exhibit 1, fol. 117, Record).

That the business of the Supreme Council of the Royal Arcanum is conducted on the lodge system, the lodges being denominated as Councils and that said Councils are composed of members of the Royal Arcanum, etc., (Findings XXX and XXXI, fol. 36, p. 18, Record).

That the defendant DeWitt Clinton Council No. 419, Royal Arcanum was organized under the char-

ter of the Supreme Council of the Royal Arcanum (Finding III, fol. 29, p. 14, Record), and received its charter from said Supreme Council (Finding V, fol. 30, p. 15, Record), and that persons applying to said subordinate Council for membership became upon admission thereto members of both organizations of defendants (Finding VI, fol. 39, p. 15, Record).

That the defendant, Supreme Council of the Royal Arcanum is a corporation organized under the laws of the State of Massachusetts (Finding I, fol. 29, p. 14, and Finding XXVI, and of fol. 34, p. 18, Record), and has been duly admitted under the laws of the State of New York to transact business in said State (Finding II, fol. 29, p. 14 and Finding XII, fol. 38, p. 19, Record).

That the defendant DeWitt Clinton Council is an unincorporated association and is doing business in the State of New York (Finding III, fol. 29, Record).

That at the time the plaintiff became a member of the defendant in the year 1883, he being then thirty-seven years of age, the rate of assessment upon members of that age was $1.80 upon each assessment, etc., (Finding VII, fol. 30, p. 15, Record, Section 430, fols. 163-164, pp. 83-84, Record). That afterwards and in the year 1898, the amount of the above assessment was with the consent of the plaintiff changed to the sum of $3.16 payable once in each month and such extra assessments not exceeding that amount as might properly be levied (Finding VIII, fol. 31, p. 15, Record).

That afterwards and in the year 1905, the defendant Supreme Council without the consent of the plaintiff and without notice to him and in violation of his rights as a member thereof changed the monthly assessment to be paid by him to $6.87 (Finding XI, fol. 32, p. 16, Record and Finding LV, fol. 42, p. 22,

Record), which assessment will automatically become $16.08 in each month upon the plaintiff attaining the age of sixty-five years (Finding LXVIII, fols. 44-45, pp. 23 and 24, Record). Also see testimony of plaintiff (fols. 84 and 85, p. 44, Record). Also see Exhibit G (defendants) (fols. 223 to 226, pp. 86 and 87, Record), showing table of assessment adopted by defendants in 1905, and subdivision 4 of Section 430 of Article VI, widows and orphans fund, Chapter I applying that table of assessments to the then present members.

That from 1905, until February, 1910, the defendant-in-error paid the rates established under the amendment of 1905, viz: $6.87 each month under protest, etc., (Finding XII, fol. 33, p. 16, Record).

That in February, 1910, the plaintiff offered to pay to the defendants the sum of $3.16 the amount of his assessment as agreed to by him under the amendment consented to by him in the year 1898, which offer was refused by the plaintiffs-in-error, and who threatened to expel him unless he paid the amount fixed by the amendments made in 1905 (Finding XIII, fol. 33, p. 16, Record. See also, Plaintiff's Exhibits 3, 4, 5 and 6 upon trial in Court below, fols. 120 to 122, pp. 66-67, Record).

That the contract in all its essentials between the parties was entered into made and completed in the State of New York (Finding XXI, fol. 34, p. 17, Record).

That the Court on the trial in the Court below also made this finding: "That by the statutory law or public acts of the Commonwealth of Massachusetts fraternal beneficiary organizations of which the defendant Supreme Council of the Royal Arcanum is one have power to change and amend their rates of assessment" (Finding LXXVII, fol. 47, p. 25, Record).

That the Court upon trial refused to make this finding proposed and submitted by the defendant, viz: "That under the law as decided and determined by the courts of Massachusetts the Supreme Council of the Royal Arcanum had power and authority to adopt rates enacted in 1905" (LXX, Proposed Finding, end of fol. 73, p. 38, Record).

That the Court also found "That the case of Reynolds vs. Supreme Council of the Royal Arcanum in Massachusetts was decided upon an agreed statement of facts and plaintiff was not directly or indirectly a party thereto" (Finding XXV, fol. 34, p. 17, Record).

That the Court also found, "That the defendant Supreme Council of the Royal Arcanum was organized on June 23rd, 1877, and that it was incorporated on November 5th, 1877 (Finding XXVII, fol. 35, p. 18, Record. See also testimony of Alfred T. Turner end of fol. 92, page 49, Record; and also Charter, Exhibit B, fols. 128 and 129, pp. 70 and 71, Record).

The plaintiff-in-error by their amended answer set up several special defenses to the complaint of the defendant-in-error. These special defenses are set forth at great length, so great in point of fact as to lead to the suspicion of good faith but summarized the allegations therein contained are as follows:

The first five paragraphs were disposed of by testimony upon the trial.

The first affirmative defense (Paragraphs VI to XVI, pp. 6 to 16, Record), really raises no issue in this action, it is a recital of matters which are immaterial and constitute no defense to the cause of action set out in the complaint.

The second affirmative defense (Paragraphs XIV to XVI, p. 10, Record) in the form therein alleged

is not true in law or in fact. The revised laws of Massachusetts do not provide for the amendment to the by-laws complained of as stated in that defense, as we shall demonstrate hereafter.

The third separate defense (Paragraphs XVII to XIX, p. 20), do not allege facts, but conclusions of law with no facts in support thereof, and upon the trial of this action no proofs were produced warranting any part of such conclusions.

The fourth separate defense (Paragraphs XX, p. 11), pleads ratification by defendant-in-error of amendment complained of and estopped for that reason.

The fifth separate defense (Paragraphs XXI to XXXIII, pp. 11 and 12), pleads a short statute of limitation under an amendment to their by-laws in 1890 (seven years subsequent to that of contract), which is no defense in this action.

The sixth separate defense (Paragraphs XXIV to XXVII, pp. 12, 13), sets up a judgment in an action in a court of Massachusetts in which the defendant-in-error was not a party, and which judgment is not alleged to have been rendered on the merits, and "that under the Constitution of the United States the same is entitled to full faith and credit in the State of New York" why, is not alleged, but this is all the reference to any United States authority and no such claim was made upon the trial.

Points of Defendant-in-Error.

FIRST: The petition upon which the writ of error was allowed does not state the facts truthfully, and must have misled Mr. Justice Hughes to whom it was presented and whose action in allowing the writ, must have been based upon it as the certified record was not produced to him on the application (p. 10).

SECOND: The assignments of error presented to this Court by the plaintiffs-in-error are absolutely untrue as appears by the certified copy of the record herein which was filed subsequent to the application for an allowance of the writ of error herein (p. 13).

THIRD: The plaintiff-in-error, Supreme Council of the Royal Arcanum is a corporation organized under the laws of the State of Massachusetts and beyond such comity as any other State is willing to confer upon it, it has no corporate status in any other State and is subject in such other State to any and all the laws, regulations and limitations, prescribed therein upon foreign corporations (p. 17).

FOURTH: The contract, the subject of the action herein, was made in, and was to be performed in the State of New York and therefore the rules of law as to its construction and performance must be under the laws of the State of New York and the laws of the State of Massachusetts have no application (p. 21).

FIFTH: Amendments to by-laws such as have been made to the by-laws of the plaintiffs-in-error as affecting contracts previously entered into by corporations like the plaintiff-in-error have been held invalid by the Courts of the State of New York as affecting such prior contracts and that rule of law is the public policy of that State (p. 26).

SIXTH: The judgment offered in evidence on the trial in the Court below (Reynolds vs. Royal Arcanum), was properly excluded; it did not bind the defendant-in-error in any manner whatsoever. And the claim on the part of the plaintiffs-in-error that the defendant-in-error is concluded by it is absolutely untenable (p. 29).

SEVENTH: No federal question was raised by the pleadings, nor upon the trial in the Court below, where under the laws of the State of New York it must be raised for the first time to be considered by the Court either upon trial or upon appeal. They cannot be raised for the first time on appeal in this Court (p. 54).

EIGHTH: The appeal taken herein by the plaintiffs-in-error is not well or properly taken. None of the questions mentioned in the statute (Section 709 of the Revised Statutes of the United States) appear to have been raised in the State Court or decided by it, etc., etc., and the facts required by that section to be raised must appear to have been so raised upon the record certified to this Court (p. 57).

NINTH: It follows therefore upon the certified record herein that the statements and allegations contained in the petition of the plaintiff-in-error produced to this Court upon the application for the writ of error herein were not only false and untrue, but must have been known so to be by the person verifying the same. Also that the assignments of error herein produced at the same time to the Court were also false and untrue and known so to be by the plaintiff-in-error (p. 57).

POINT FIRST.

The petition upon which the writ of error was allowed does not state the facts truthfully and must have misled Mr. Justice Hughes, to whom it was presented and whose action in allowing the writ must have been based upon it as the certified record was not produced to him upon the application.

The certified record bears the certificate of the Clerk of the County of Kings, New York, dated the 16th day of January, 1913, (fol. 321, p. 136, Record). The writ of error was allowed by this Court on the 8th day of January, 1913 (fols. 299, 300, p. 125, Record). So that the Court had to rely upon the promise contained in the assignment of errors by the plaintiff in-error here (fol. 308, p. 129, Record), viz: "*All of said errors will appear fully and at large in the record*" etc., "*which will be duly certified*" etc., "*and to which reference is hereby made for the detailed statement of the error aforesaid.*"

THIS STATEMENT IS ABSOLUTELY UNTRUE AND WAS KNOWN TO BE UNTRUE WHEN MADE BY THE PLAINTIFFS-IN-ERROR.

The basis of the application here was FIRST, *the petition for the writ of error and* SECOND, *the assignments of errors and both* ARE UNTRUE AND WERE MADE FOR THE DELIBERATE INTENTION TO DECEIVE.

The petition does not state any where or even pretend that it is a correct statement of this action in

the Court below, for the very good reason that it omits to set forth the plaintiffs' cause of action and the proceedings had thereupon upon the trial in the Court below. Nor does it state the judgment or relief claimed; nor does it state upon what evidence verbal or written or both was the judgment complained of based. If the claim of the defendant-in-error was upon a contract then it fails so to state and it neither states the contract nor where it was made or where it was to be performed.

All of which facts were not properly set forth in the petition as the same exists and existed at the time of the commencement of the action in the Court below and of its trial therein; and had such facts been properly and honestly set forth in such petition, the writ of error herein would not have been allowed as NO FEDERAL QUESTION IS INVOLVED HEREIN NONE HAVING BEEN RAISED IN THE COURT BELOW.

But in the absence of the facts as we have just stated the first paragraph of that petition becomes significant as a model of duplicity. It reads: ?

> "First. The plaintiff-in-error Supreme Council of the Royal Arcanum, was and still is a fraternal beneficiary corporation duly organized under the laws of Massachusetts, *and is a citizen of that State, carrying on its business in accordance with the statutory law of Massachusetts,*" etc. etc.

PERHAPS SUCH A STATEMENT IS TRUE, BUT WHEN APPLIED TO A CONTRACT MADE IN THE STATE OF NEW YORK TO BE PERFORMED IN THAT STATE, IT IS UNTRUE. Of course the statement as to citizenship is incorrect as has been repeatedly held by this Court.

But in view of the fact that the plaintiffs-in-error has (Paragraph VII of the Answer, fol. 12, p. 7, of the Answer, fol. 12, p. 7, Record), admitted that it *"has been duly admitted pursuant to the laws of the*

State of New York to transact business in the State of New York" and that the contract herein was made in the State of New York and was to be performed in that State, these facts being suppressed renders such a statement absolutely untrue.

The balance of that petition is composed of statements none of which state the cause of action of the defendant-in-error in the Court below nor of the proofs thereunder upon trial therein.

The plaintiffs-in-error offered in evidence the Revised Laws of the State of Massachusetts for the year 1902, Chapters 119 and 109, Exhibits I and J (pp. 91 and 95, Record), which were admitted (see evidence of Curtis H. Waterman, fol. 112, p. 61, Record). No objection being made thereto on the part of the defendant-in-error.

The part of that statute applicable to the amendments of by-laws as claimed by plaintiffs-in-error *being Section 2 of Chapter 119 , which provide* (fol. 240, p. 91, Record), as follows: *"The by-laws may"* etc., *"also prescribe,"* etc., *"the amount which shall be deemed one full individual assessment for the respective funds,"* etc., *"the method of the amendment of the by-laws,"* etc., *which warranted the finding quoted in full in such petition* (top of page 122, Record). *"That by the statutory law on public acts of the Commonwealth of Massachusetts fraternal beneficiary organizations of which the defendant, Supreme Council of the Royal Arcanum is one, have the power to change and amend their rates of assessment," but in view of the other part of the statute of the same State* (Exhibit J, p. 95), which provides: *"Such laws of amendment,"* etc. *"shall not take away or impair any remedy which may exist by law,"* etc., *"against the corporation,"* etc., *"for a liability previously incurred"* together with the fact *that the contract herein had been previously in-*

curred, viz., made in 1883 and amended in 1898, made the facts or law stated in the finding so quoted inapplicable in the present case.

The omission to state that fact in addition to those stated in the petition was a deceit intentionally made upon this Court by the plaintiff-in-error.

The ninth allegation of the petition does not state the facts truly as to the refusal to admit in evidence the record in the action of Reynolds against the plaintiffs-in-error.

That record was offered pending the examination of the above mentioned witness Waterman (pp. 61 to 63, Record), which shows that the Constitution of the United States or Acts of Congress were not mentioned or even hinted at.

The balance of the petition is also untrue, the statements therein contained not being borne out by the facts as disclosed by the record herein.

POINT SECOND.

The assignments of errors presented to this Court by the plaintiffs-in-error are absolutely untrue as appears by the certified copy of the record herein which was filed subsequently to the application for and allowance of the writ of error herein.

The first assignment of error is untrue; nowhere in the pleadings in this action was any allegation made which warrant any such assignment, and the questions therein alleged were not passed upon by the Courts below.

Further there was no proof produced to the Courts below of any Statute of the State of Massachusetts authorizing the acts of the plaintiff-in-error complained of in this action. Neither was there produced before the Court any judgment upon the merits in any Court of the State of Massachusetts, which affected or could or can affect the contract of the defendant-in-error herein. And that it is apparent upon the face of the certified record herein that the Courts of the State of Massachusetts had no jurisdiction of the defendant-in-error or of the subject-matter of the action herein, and that therefore the judgment as mentioned did not bind the defendant-in-error in any manner whatsoever.

But such an assignment of error is also fallacious in failing to state that any claim was made by the pleadings or upon the trial of the Court below under any part of the Constitution of the United States or of any law of the Congress of the United States, and that it appears by the certified record herein that no claim whatever under the Constitution or any law of Congress of the United States was made upon the trial herein in the Court below, so that no claim of full faith and credit or to any record, &c., of the State of Massachusetts could be or was passed upon or adjudicated by the Courts of the State of New York.

The second assignment of error is not true. The Court did not find that the plaintiff-in-error had the power to adopt the amendments in question. The Court only found, "That by the statutory law of public acts of the Commonwealth of Massachusetts fraternal beneficiary organizations of which the Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessment." So that the failure therein alleged to give full faith and credit to the public acts of Massachu-

[illegible] (Finding 1.01(vii)). [illegible]

[illegible] (Finding 9.01 [illegible]), [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

and rendered in disregard of the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereof.

These grounds in this case upon the Record filed herein are not only frivolous, but lack good faith.

But the statements in conclusion of said assignment of errors that "the assertion of a right, privilege or immunity under the United States Constitution by the plaintiffs-in-error was distinctly urged upon the trial of the cause in the Supreme Court of the State of New York; before the Appellate Division of the Supreme Court and before the Court of Appeals as follows:

In and by the Second, Third and Sixth separate defenses and by the Seventh conclusion of law submitted to the Justice before whom the cause was tried, proposed by the plaintiffs-in-error, refused by said Justice and duly excepted to," are certainly untrue.

Reference being had to the Second and Third separate defenses (Paragraphs XIV to XIX, p. 10, Certified Record), will show that nothing is stated therein which refers to the Constitution of the United States or to any claim made thereunder by the plaintiffs-in-error.

The Sixth separate defense (Paragraphs XXIV to XXVII of the Answer) and the reference therein as to full faith and credit, etc., therein contained, was and is dependent upon the question as to whether the defendant-in-error is bound by and estopped by the facts therein and no proof was produced before the Courts of the State of New York showing any liability of the defendant-in-error by reason of the judgment rendered by the Court of Massachusetts therein referred to.

The Seventh conclusion of law (p. 40, fol. 76, Record), contains not one word relative to the Constitu-

tion of the United States or of any claim made thereunder.

The allegation as to any reference or claim made in the printed argument of the plaintiffs-in-error on appeal has no merit for such a question cannot be raised on appeal for the first time. Such a question must be based upon facts not only alleged in the pleading, but also upon proof given in open Court upon a trial.

POINT THIRD.

The plaintiff-in-error, Supreme Council of the Royal Arcanum, is a corporation organized under the Laws of the State of Massachusetts and beyond such comity as any other State is willing to confer upon it, it has no corporate status in any other State, and is subject in such other State to any and all the laws, regulations and limitations prescribed therein upon foreign corporations.

The power of a State over foreign corporations is not less than the power of a State over domestic corporations. No case declares otherwise. We said in Orient Ins. Co. v. Daggs (172 U. S., 557), that which a State may do with corporations of its own creation it may do with foreign corporations admitted into the State. This seems to be denied, if not generally,

at least as to the plaintiffs-in-error. The denial is extreme and cannot be maintained. The power of a State to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations.

N. Y. Life v. Craven, 178 U. S., 381-401.

To the same effect:

Lafayette Ins. Co. v. French, 18 How., 404.
Ducat v. Chicago, 10 Wall., 410.
Paul v. Virginia, 8 Wall., 168.
Doyle v. Continental, 94 U. S., 535.
St. Clair v. Cox, 106 U. S., 350.
Cooper v. Ferguson, 113 U. S., 727.
Fritto v. Palmer, 132 U. S., 282.
Horn v. New York, 143 U. S., 305.
Ashley v. Ryan, 153 U. S., 536.
Philadelphia v. New York, 119 U. S., 110.
Bank, etc. v. Earle, 13 Peters, 519.
Hooper v. California, 155 U. S., 558 and cases there cited.
Waters Pierce v. Texas, 177 U. S., 28.
Cable v. U. S. Life, 191 U. S., 288.
Allgeyer v. Louisiana, 165 U. S., 578.
Dayton v. Barton, 183 U. S., 28.
Security v. Prevoit, 202 U. S., 246.
Pinney v. Nelson, 183 U. S., 144.

And the laws of the State of New York relative to foreign corporations are in absolute accordance with the foregoing decisions in this Court.

The complaint in this action alleges: That the defendant (plaintiff-in-error here) is a corporation organized under the laws of Massachusetts and doing business in the State of New York (Paragraph First, p. 3, Record).

This allegation is not denied by the answer of the plaintiffs-in-error, therefore under Section 422 of the Code of Civil Procedure of the State of New

York must for the purposes of the action be taken as true. This is supplemented by the allegation in the answer of the plaintiffs-in-error, "that said defendant, Supreme Council, has been duly admitted pursuant to the Laws of the State of New York to transact business in said State of New York" (Paragraph VII, Answer, fol. 12, p. 7, Record). This renders the fact absolute that that foreign corporation in the State of New York in all the business transacted by it in that State is transacting such business under the laws of that State.

Any assertion by that corporation that it is doing business in the State of New York under the laws of the State of Massachusetts must be untrue, or it alleges an unlawful action and breach of faith on its part thereby seeking by a barefaced attempt on its part to violate the law to obtain an undue and illegal advantage.

The law of the State of New York relative to Fraternal Benefit Associations in force at the time of the amendment of the by-laws of the plaintiffs-in-error relative to the amount of the assessments, viz: in the year 1898.

It is Article Seven of the Act of the Legislature of that State entitled: "An act in relation to insurance corporations. Constituting Chapter 48 of the General Laws," laws of New York, 1892, p. 1930, which provides as follows:

> "Section 232. No fraternal, etc., organized by and under the laws of any other State or foreign country," etc., "or having its principal place of business outside of the State of New York shall transact business within this State until it has filed with the superintendent of insurance," etc., "and obtained a certificate from such superintendent authorizing it to do business within this State," etc.

> "Section 233. All beneficiary societies or associations whether voluntary or incorporated under the laws of this State or any other State or Territory of the United States or of the District of Columbia doing any kind of business in this State, authorized by this article," etc., "are declared to be mutual benefit fraternities," etc., "and shall be subject only to the provisions of this article and such provisions of Article One of this chapter as may be specially applicable thereto."

The provisions of Article One of that chapter provide as follows:

> "Section 25. * * * A foreign insurance corporation may transact in this State only such kinds of business as under the laws of the State a like domestic corporation is authorized to transact."
>
> "Section 29. No foreign insurance corporation shall transact any business of insurance until it has filed with the superintendent of insurance a certified copy of its charter," etc., etc., "and an agreement under its corporate seal that it will not while authorized to do business in this State transact any business therein, which a similar domestic insurance corporation is prohibited from transacting."
>
> "Section 39. All domestic corporations then in existence are brought under the provisions of the present law," etc.

The Court of Appeals of the State of New York construing the insurance law of the State held:

> "When these corporations seek the benefits of the laws creating or authorizing them, they must conform to the laws enacted for their conduct and if they are unwilling to do so they must go out of business."

"The fact that this company was a foreign corporation can make no difference. When it comes into this State by comity to do its business here," etc., etc., *"it must obey our laws and conform to our public policy, and if they are not willing to do so they must keep out of the State."*

People v. Formosa, 171 N. Y., 478, 481.

POINT FOURTH.

The contract, the subject of the transaction herein, was made in and was to be performed in the State of New York, and therefore the rules of law as to its construction and performance must be under the laws of the State of New York, and the laws of the State of Massachusetts have no application.

As appears by the uncontradicted evidence in the case and also from the pleadings the contract herein was made in the State of New York.

"The application was made by the defendant-in-error at Brooklyn and was addressed to De Witt Clinton Council No. 419 plaintiff-in-error. 'located at Brooklyn New York' (Exhibit 1, fol. 117, p. 63, Record).

"De Witt Clinton Council No. 419 is doing business in New York (Paragraph Second Complaint, fol. 4, p. 3, Record).

"Defendant-in-error was and is a resident of Brooklyn (testimony of defendant-in-error top of page 45, Record). After the application he

was initiated in the Council and sometime after received a certificate (testimony Samuel Green bottom of page 43, Record).

"The certificate was produced and marked in evidence (Exhibit 2, page 65, Record).

"The certificate reads, 'This certificate is issued to Samuel Green a member of De Witt Clinton Council No. 419 Royal Arcanum located at Brooklyn, N. Y.' etc.

"The Supreme Council of the Royal Arcanum is doing business as a corporation in the State of New York (Paragraph First Complaint, top of page 3, Record).

"*Nothing about the laws of Massachusetts relative to any of the above evidence or which may affect such evidence was hinted at during the trial of the action.*

"This, with the by-laws of the plaintiffs-in-error for the year 1883, is all the contract produced in the whole progress of the case. The by-laws for 1883 were put in evidence upon the trial (Exhibit A, fol. 130, etc. page 71, Record).

"The laws of 1877 when the plaintiff-in-error Supreme Council, etc. was incorporated were not produced upon the trial."

This is all that was produced or testified to upon the trial herein as the contract between the parties—it was made and delivered in the State of New York.

The contract was and is to be performed in the State of New York by its terms and has been performed by the defendant-in-error.

"The uncontradicted testimony of the defendant-in-error is that he has paid assessments from the time of his membership (top of page 44, Record).

" 'Notices of assessments are sent by mail,' etc. 'I pay them to the collector as required by the laws of the Order, the collector of De Witt Clinton Council' (testimony of Samuel

Green defendant-in-error, fol. 87, p. 46, Record).

"Assessments are made payable to the collector" (Law I, Widows & Benefit Fund Section 1, top of page 76, Record).

So that the contract in so far as it was to be performed by the defendant-in-error was carried out by him.

The contract on the part of the plaintiff-in-error is prospective, but that also is to be performed in the State of New York.

"Upon the death of a Brother, etc. a Committee is to be appointed, etc., its Report is to be forwarded to the Supreme Secretary, etc.

"On the receipt of such official notice, etc. the Supreme Secretary shall draw an order on the Supreme Treasurer in favor of the person named in the Benefit Certificate, etc., and transmit such order to the Treasurer of the Council of which the deceased was a member, &c.

" 'It shall be the duty of the Treasurer of the subordinate Council,' etc. 'To immediately deliver it to the person or persons in whose favor it is drawn,' etc. etc. (Laws of Royal Arcanum Law 1. §§3. 4, 5, p. 77, Record).

The performance on the part of the plaintiff-in-error is the payment to the person entitled of the amount of the certificate by and through the agency of the Subordinate Council. In the present case in Brooklyn, N. Y.

Upon these facts the Trial Court upon the trial of this action made the following Finding of Fact:

XXI. That the contract in all its essentials between the parties, was entered into, made and completed, in the State of New York (fol. 34, page 17, Record).

The Court of Appeals as will be seen by its opinion holds and bases its opinion upon that finding (fol. 337, p. 147, Record).

The defendant-in-error will here say that nowhere in the papers forming the evidence in the action, in the pleadings, or in any manner whatever does it appear that any reservation under the laws of Massachusetts has been made by any of the parties herein in relation to the contract, the subject of the action herein, or that such reservation was even hinted at or imagined.

Matters bearing upon the execution, interpretation and the validity of a contract are to be determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance.

Scudder v. Union Bk., 91 U. S., 406-412.
Pritchard v. Norton, 106 U. S., 124-136.
Mills v. Dow, 133 U. S., 423-431.
Equitable v. Clements, 140 U. S., 226-236.
Mutual v. Cohen, 179 U. S., 262-264.
Mutual v. Hill, 193 U. S., 551-554.
Knights, &c. v. Jarman, 187 U. S., 197.
National Ass'n, &c., v. Brahan, 193 U. S., 635.
Supreme Council v. Getz, 112 Fed. R., 110.

"Questions of *lex loci contractus* and of the *lex loci solutionis* are questions of general law that frequently arise in actions respecting written agreements" etc. "to insist" etc. "that the matter should be controlled by the law of the place where the contract was made and to be performed" etc. is no more than to insist that the controversy shall be determined according to the rules of law properly applicable thereto.

El Paso v. Eichel, 226 U. S., 590-597.

In an action brought in the Court of the State for the violation of a contract made in the State, the law of that State gives the right and measure of recovery.

Selover v. Walsh, 226 U. S., 112-123.

The law of *lex loci* is the same in the State of New York and also in Massachusetts.

The contract having been made and consummated in the State of New York, is to be governed in its enforcement, by the laws of that State.

Meyer v. Pythian, 178 N. Y., 63-71.
Cannon v. N. W. Mutual, 29 Hun, 470.
Bloomingdale v. Lissberger, 24 Hun, 355.
South Bay v. Howsy, 113 App. Div., N. Y., 382-386.
Swing v. Dayton, 124 App. Div., N. Y., 58-59.

The question presented is whether the matter presented is under the laws of Massachusetts, rather than the laws of New York. If it was not subject to the laws of Massachusetts, then the statutes of Massachusetts which are relied on by the plaintiff-in-error would be immaterial.

> "The place of performance will ordinarily be deemed to be the place of a contract unless the parties intended otherwise." Citing cases.
> "If the contract was not governed by the laws of Massachusetts, the provisions of its statutes would, of course, have no application."

Bottomley v. Mutual, 170 Mass., 274-277.

Where parties being residents of Massachusetts made application for insurance to an insurance company in New York, and the policy was sent from New York to Massachusetts to be delivered to the applicants on payment of the first premium, the Court held:

> "The contract was made in this State" (Massachusetts) "and the rights of the parties so far as involved in this suit, must be settled by the laws of this State."

Millard v. Brayton, 177 Mass., 533-537.

In the case of Johnson v. Mutual Life, etc., 180 Mass., 407. The Court affirms the doctrine above stated and adds:

> "Massachusetts is not concerned with contracts in general made elsewhere simply because one of the parties is domiciled here."

It also holds that the laws of Massachusetts as to contracts do not extend beyond the State.

POINT FIFTH.

Amendments to by-laws such as have been made to the by-laws of the plaintiffs-in-error as affecting contracts previously entered into by corporations like the plaintiffs-in-error have been held invalid by the courts of the State of New York as affecting such prior contracts and that rule of law is the policy of that State.

The Court of Appeals, in its opinion in deciding the present case, refers to one case wherein the law of the State governing cases like the present was fully discussed and finally determined.

The Court, in that case, in its opinion (Judge Vann writing for the Court) says:

> "I am personally of the opinion that the amendment increasing the rate of assessment is also void for I can see no difference in prin-

ciple between reducing the benefits and increasing the amount to be paid for benefits. *The plaintiff entered into the contract on the faith of the promise by the association that he should* 'PAY AT THE SAME RATE THEREAFTER SO LONG AS HE REMAINS CONTINUALLY IN GOOD STANDING IN THE ORDER,' *which he had the right to assume and the defendant knew he would assume was a covenant not to increase the rate,*" etc., etc.

"It was a vested right immune from change by amendment in the absence of a specific reservation of power to amend in that particular. On the average such contracts would be impaired by doubling assessments to the same extent as by cutting off one-half of the benefit. The price to be paid by the plaintiff for insurance is as essential a part of his contract as the amount of insurance to be paid to him by the defendant on the maturity of the policy. Whether the one is increased or the other proportionately decreased makes no difference in principle or in the final result. By either method the pecuniary value of the contract, which is property, would be reduced one-half."

Wright v. Maccabees, 196 N. Y., 391.

This same doctrine was also held by that court in a similar case viz.

Dowdall v. Catholic Union, 196 N. Y., 405.

In the case of Wright, above mentioned, it will be noticed that a reference is made to a promise contained in the contract before the Court, viz:

"The plaintiff entered into the contract on the faith of the promise by the association that he should '*pay at the same rate thereafter so long as he remains continually in good standing in the order.*"

Reference being had to the by-laws of the plaintiff-in-error for the year 1883, when the defendant-in-error, became a member, providing for the amount of assessments which members should pay, it will be seen contains the following provision, *"and the same amount on each assessment thereafter, whilst he is a member of the order"* (Section 1, p. 76, Record).

The amount of assessments was changed in the year 1898 by amendment to the by-laws, which change was consented to by the defendant-in-error. The by-laws for the year 1898, relative to assessments, contains also, the same provision as stated above (Section 430, fol. 163, p. 83, Record), and in the same identical words.

This Court holds the same doctrine as the New York Courts and in a parallel case, says:

"In this case the contract is one made by the appellant itself for the general purpose of its business. With every opportunity for a choice of language it used a form of expression which clearly indicated a desire to exempt * * * and it has no right to complain if the Court holds it to have intended what it so plainly expressed. * * * *Such language is too clear to admit of a doubt of the real meaning."*

Calderon v. Atlas, 170 U. S., 272-281.

When a Court of law is construing an instrument, whether a public law or a private contract, it is legitimate if two constructions are fairly possible to adopt that one which equity would favor.

Washington vs. Cour d' Alene, 160 U. S., 99-101.

"Every intendment is to be made against the construction of a contract under which it would operate

as a snare (Hoffman vs. Aetna Ins. Co., 32 N. Y., 405)."

Utley v. Donaldson, 91 U. S., 29-46.

Expressio unius est exclusio alterius, was applied by this Court upon express declarations in a contract, the Court holding that such rule of law meant what it said, *"that absolute expression in a contract excludes its alteration."*

Burck v. Taylor, 152 U. S., 634-648.

To the same effect

Mutual L. I. Co. v. Hill, 193 U. S., 551, 559.

POINT SIXTH.

The judgment offered in evidence on the trial in the court below (Reynolds v. Royal Arcanum) was properly excluded; it did not bind the defendant-in-error in any manner whatsoever, and the claim on the part of the plaintiff-in-error that the defendant-in-error is concluded by it, is absolutely untenable.

Examination of the judgment roll above mentioned, will show that the requisites necessary to render the same *res adjudicata* and therefore a legal estoppel are absolutely wanting, thus:

I. *The action was not between the same parties.*

II. *The Court rendering the judgment had not jurisdiction of all the parties to the present action.*

III. *The cause of action in the two actions are separate and distinct.*

IV. *The Court in that action had not jurisdiction of the subject-matter in the present action.*

V. *The action of Reynolds vs. Royal Arcanum, sought to be pleaded as an estoppel herein was not tried upon the merits, hence the judgment therein is not res adjudicata.*

I. *The action was not between the same parties.*

An examination of the judgment roll in that action (Exhibit K for identification, fol. 248, p. 96, Record), will show that the defendant-in-error is not named as a party therein and is nowhere mentioned.

Paragraph 2 of the bill of complaint limits the matter to the parties named therein "of certain members" etc., "expressly authorizing them to act in their behalf and all other members" etc., "who shall join in this bill of complaint."

The parties to that action named in the bill of complaint show that the defendant-in-error is not one of them.

That judgment roll is silent as to the names of the certain members "authorizing" etc., and can bind no one.

As to any members joining that bill of complaint the record of that judgment is absolutely silent.

But after certain proceedings were had in the action, viz: a demurrer to the complaint, a hearing upon the demurrer and a decision thereon by the Court, the record shows (end of fol. 256, p. 101, Record), that the "bill is brought in their own behalf and for the benefit of others who may join therein."

As the matter was submitted to the Court upon an agreed state of facts it is difficult to see how any other person can or may join therein.

In any event the proof herein shows that the defendant-in-error did not so "join therein."

II. *The Court rendering that judgment had not jurisdiction of all the parties to the present action.*

It certainly did not have jurisdiction of the defendant-in-error who has been throughout a resident of the State of New York, and who was not represented by anyone in that action.

III. *The two actions are not upon the same subject-matter.*

The Reynolds action was brought to restrain a corporate act generally; the grounds apparently being, abuse of power and lack of necessity rendering the corporate act oppressive, etc., and praying for an injunction restraining the corporation from enforcing the amended by-law.

The present action is brought and the judgment rendered therein is upon the ground that the amended by-law affects and impairs the vested rights of the defendant-in-error acquired under a contract between him and the plaintiffs-in-error long prior to such amendment.

While the proof may be similar the law bearing upon each action is absolutely distinct.

IV. *The Court in that action had not jurisdiction of the subject-matter in the present action.*

There can be no pretence that the Court in Massachusetts had before it the contract between the parties to this action in the absence of the defendant-in-error.

The defendant-in-error has been unable to find a single case where any Court of one State has attempted to bind the citizen of another State, upon a

contract made and to be performed in his own State, in his absence or non-consent to the jurisdiction of the Court of the State seeking to render judgment.

V. *The action of Reynolds v. Royal Arcanum sought to be pleaded as an estoppel herein was not tried upon the merits, hence the judgment therein is not res adjudicata.*

The record produced shows that that action was not tried by the Court, no evidence introduced, but that the parties agreed upon certain facts and submitted the action upon those facts to the Court (Exhibit K, fol. 256, p. 101, Record), and that at the request of the parties the cause was reserved "upon the pleadings and agreed facts, for," etc., "the determination of the full Court," etc., etc. (fol. 287, p. 107, Record).

The judgment was rendered by that Court thus, "Bill dismissed with costs" (top of p. 108). The judgment thus rendered is not on the merits, and the Court evidently did not intend to render it on the merits, and no evidence was introduced or offered on the trial of this action showing the legal effect of such a judgment as an estoppel, even under the laws of Massachusetts, upon any person whatsoever.

Beyond this the facts submitted were not identical with the facts in the present action, and as evidence in the present action, are immaterial, irrelevant and incompetent.

The laws of the State of Massachusetts not having been produced on the trial herein, as above stated, the New York Courts had the authority to place their construction thereon according to the Laws of the State of New York, which is as follows:

> "The submission of a controversy without action, under the Code, only contemplates that the controversy between the parties should be

> decided; and that the parties had no right to agree for others, and gave the Court no authority to go beyond a decision affecting their interests in a controversy as to which the facts were submitted."
>
> Union, &c., B. K. v. Kupper, 63 N. Y., 617-618.

This theory of the law as to judgments by submission is also that which seems to have been adopted by this Court, which holds:

That a judgment (as offered in the Court below herein), was a consequence of the consent of the parties and not of the judgment of the Court, and that the Court below had the right to decline to treat it as *res adjudicata.*

> Lawrence v. Janesville, 138 U. S., 552-562, and cases cited therein.
> Gaines v. Relf, 12 How., 472-537.
> Homer v. Brower, 16 How., 354-366.

It is well settled that to work an estoppel by judgment there must be identity of parties in the two actions.

> Brown v. Fletcher's Estate, 210 U. S., 82.
> Ingersoll v. Coram, 211 U. S., 335.
> Troxell v. Del., L. & W. R. R., 227 U. S., 434-443.
> Old Colony v. Omaha, 230 U. S., 100-122.

"No State can exercise direct jurisdiction and authority over persons or property without its territory," etc. "And so it is laid down by jurists as an elementary principle that the law of one State has no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond its territory so as to subject either persons or property to its decisions.

'Any exertion of authority of this sort', says Story, 'is a mere nullity and incapable of binding such persons or property in any other tribunal' (Story Const. Laws, Sec. 539)."

St. Clair v. Cox, 106 U. S., 350-353.

To same effect:

Pennoyer v. Neff, 95 U. S., 714-722.
Thompson v. Whitman, 18 Wall., 457.

And the bringing in of parties in another State, in an action by constructive notice, has been held by this Court as of no effect and giving no jurisdiction.

Empire v. Darlington, 101 U. S., 87-92.
Hassell v. Wilcox, 130 U. S., 493-506.
Brooklyn v. Insurance Co., 97 U. S., 362-370.

And no judgment of a Court is due process of law if rendered without jurisdiction in the Court, or without notice to the party.

To give a proceeding validity there must be a tribunal competent by its constitution, that is, by the law of its creation, to pass upon subject-matter of the suit; and if that involves merely the determination of the liability of the defendant, he must be brought within its jurisdiction by the service of process within the State or his voluntary appearance.

Even a judgment in proceedings *in rem* binds only those who could have made themselves parties to the proceeding and who had notice. And such a judgment is wholly void if a fact essential to the jurisdiction of the Court did not exist.

Scott v. McNeal, 154 U. S., 34-46.
Lamp v. Brass, 91 U. S., 656.
Cooley on Court Limitations, §405.
Cooper v. Reynolds, 10 Wall., 308-316.
Pennoyer v. Neff, 95 U. S., 714-734.

And by jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought.

Cooper v. Reynolds, 10 Wall., 308-316.

Conclusiveness is the characteristic of every tribunal ONLY while acting judicially within the sphere of its jurisdiction.

Higbie v. Faulkner, 153 U. S., 109, 117.

To render a judgment valid which is claimed to have been rendered by the Court of one State against a citizen of another State, it must appear from the record that he had been brought within the jurisdiction of the Court rendering the judgment, either:

1. By the service of process.

2. By his voluntary appearance.

3. That he had in some manner authorized the proceeding.

Grover v. Radcliffe, 137 U. S., 287-298.

In the action of Reynolds v. Arcanum, the defendant-in-error had received no notice, and was not a party, and had no opportunity to produce or examine witnesses; and he was not privy in any manner to any party therein.

Rutherfurd v. Geddes, 4 Wall., 220-224.
Tappan v. Beardsley, 10 Wall., 427.
Dupasseur v. Rocherean, 21 Wall., 130-135.
Winona v. Plainview, 143 U. S., 371-390.
Bedon v. Davis, 144 U. S., 142.
Hale v. Finch, 104 U. S., 261-265.
Robertson v. Gordon, 226 U. S., 311-316.

A judgment upon the precise point in controversy cannot be given in evidence against one not a party or privy to the same.

Mut. Benefit v. Tisdale, 91 U. S., 238-244.
Humes v. Scruggs, 94 U. S., 22-25.

There is no privity of contract either in the action of Reynolds v. Arcanum or of the present action, there is no evidence in the Reynolds case that the contract between the parties to that action was the same as the contract between the parties to this action:

"No judgment can be regarded as *res adjudicata* as to any matter where the rights in the subject-matter arises out of mutuality and not by succession, unless the party could, as a matter of right, appear and defend, even though he may have had knowledge of the suit. Otherwise he might be bound by a judgment as to which he never had the opportunity to be heard, which is opposed to the first principles of justice (Brabrook v. Boston Five Cents Saving Bank, 104 Massachusetts, 228-233)."

Bigelow v. Old Dominion, 225 U. S., 111-131.

"A party may have an indirect interest in the performance of an undertaking, but that is a very different thing from the privity necessary to enable them to enforce the contract by a suit in his own name (Nat. Bk. v. Grand Lodge, 98 U. S., 123-124; Hendrick v. Lindsay, 93 U. S., 143-149; National Savings Bk. v. Ward, 100 U. S., 195-202-230)."

Alliance v. Home, 226 U. S., 220-230.

The defendant-in-error does not claim under any of the parties to the action, in Reynolds v. Arcanum, and was not a party to that suit, either actually or constructively; hence the judgment therein can have no effect as evidence for or against him by way of estoppel or otherwise.

Giles v. Little, 134 U. S., 645-649.
Pearce v. Rice, 142 U. S., 28-38.
Stone v. Farmers Bk., 174 U. S., 409-412.

Judgments bind parties and privies. They do not bind strangers.

Sessions v. Johnson, 94 U. S., 347-358.
Bigelow v. Old Dominion, 225 U. S., 111-138.

A judgment *in rem* binds only the property within the control of the Court, and a judgment *in personam* binds only the parties to that judgment and those in privity with them.

Johnson v. Powers, 139 U. S., 156-159.

It is essential to the validity of any judgment as against any person sought to be charged therewith, that the Court rendering it should have had jurisdiction of the parties and of the subject-matter.

Standard Oil v. Missouri, 224 U. S., 270-280.
Natl. Ex. Bk. v. Wiley, 195 U. S., 257-269.

On principle, a point not in litigation in one action, cannot be received as conclusively settled in any subsequent action, upon a different cause, because it might have been determined in the first action.

Cromwell v. County of Sac., 94 U. S., 351-356.
Last Chance v. Tyler, 157 U. S., 683-687.
So. Pacific v. U. S., 183 U. S., 519-533.
Keokuk v. Missouri, 152 U. S., 301-315.
Roberts v. No. Pacific, 158 U. S., 1-29.

It is well settled that a decree is to be construed with reference to the issues it was meant to decide.

Vicksburg v. Hanson, 231 U. S., 259-269.

The Court rendering the judgment must have had jurisdiction of the parties and of the subject-matter—only in that case is a judgment conclusive.

Thompson v. Whitman, 18 Wall., 457.

Decisions of the Courts of another State are not regarded as conclusive in any State when the Court rendering the decision had not jurisdiction of the subject-matter or of the parties.

Bigelow v. Old Dominion, 225 U. S., 111-134, and cases cited.

The judgment of a Court in any case while it may be referred to by the parties in another action as a judicial precedent does not operate as an estoppel against any person not a party thereto.

Striker v. Goodnow, 128 U. S., 527.

Decisions of a State Court, in another State can only be proven as a fact and if not then proven, in the courts of the other State cannot be taken judicial notice of by this (U. S. Supreme Court) on a writ of error.

Huntington v. Attrill, 146 U. S., 657-678.

Reference to the agreed facts in the action of Reynolds v. Arcanum (fol. 256, p. 101, Record) *will show that that action was not upon the state of facts as the present.*

Paragraph 1 recites: "The Supreme Council of the Royal Arcanum is a corporation organized under the general laws of this commonwealth as a fraternal beneficiary association. Its charter was dated November 5, 1877, and is now subject to the provisions of Chapter 119 Revised Laws of Massachusetts and acts in amendment thereof."

This statement renders the whole of any decision by the Court of no effect as an exemplification of the

laws of that State as affecting this action or the rights of the defendant-in-error; for the reasons which are apparent under the facts proven in this action:

1. The Supreme Council was organized June 23, 1877, and incorporated November 5, 1877.

2. The statute of the State of Massachusetts in force at the time of incorporation was not that stated in the action of Reynolds, viz., revised laws, passed in 1902, and therefore those revised laws could not affect the contract herein made in 1883.

3. The contract made herein was made in the State of New York and is subject to its laws.

Laws have no force of themselves beyond the jurisdiction of the State which enacts them and can have extra territorial effect only by the comity of other States.

Huntington v. Attrill, 146 U. S., 657-669.

The record of that case therefore shows upon its face and also the evidence proves that the judgment could not have been rendered on the merits; and indeed the record of that case does not show a decision on the merits; the judgment was *"bill dismissed"* (page 108, Record,) a non-suit for failure of facts.

That record further shows that the defendant-in-error was not a party to that action and the Court below upon the trial of this action made the following finding:

> "That the case of Reynolds v. Supreme Council of the Royal Arcanum in Massachusetts was decided upon an agreed statement of facts and plaintiff" (defendant-in-error here) "was not directly or indirectly a party thereto" (Finding XXV, bottom of page 17, Record).

Yet the plaintiffs-in-error have the audacity to urge upon this Court that full faith and credit were not given to those Massachusetts records.

Another matter presented to this Court by the plaintiffs-in-error was the request by the plaintiffs-in-error "upon the trial of said action, and before the Appellate Division and Court of Appeals that the complaint of the defendant-in-error should be dismissed" etc. (fol. 293, p. 122, Petition for Writ of Error).

This statement was not honestly made, for nothing of the sort was done at the trial and certainly not in the Appellate Division or Court of Appeals where such a motion would be irregular and improper. But the printed record is absolutely silent as to such motions for the very good reason it never occurred.

This Court is Without Jurisdiction.

The *onus probandi* is upon the party seeking to obtain a revision of the case to establish the jurisdiction in a case brought upon writ of error. Such facts as establish jurisdiction must appear upon the face of the record.

Hagan v. Foison, 10 Peters, 160.

"This Court has had frequent occasions to say that its right to review the judgment of the highest court of a State is especially limited to the provisions of Sec. 709 of the Revised Statutes of the United States. This right of review" etc. "depends upon an alleged denial of some right, privilege or immunity specially set up and claimed under the constitution or authority

of the United States which it is alleged has been denied in the Court below. In such cases it is thoroughly well settled that the record of the State court must disclose that the right so set up and claimed was expressly denied or that such was the necessary effect in law of the judgment" (citing cases).

Seaboard v. Duvall, 225 U. S., 477, 487.
Crowell v. Randall, 10 Peters, 368.
Maxwell v. Newbold, 18 How., 511-515.
Dower v. Richards, 151 U. S., 658-666, and cases there cited.

To give this Court jurisdiction on a writ of error to a State court it must appear affirmatively not only that a federal question was presented for decision, but that its decision was necessary to the determination of the cause and that it was decided adversely to the party claiming a right under the federal laws, or constitution, or that the judgment so rendered could not have been given without deciding it.

Eustis v. Bolles, 150 U. S., 361.
California v. Davis, 151 U. S., 389-398.
Missouri v. Fitzgerald, 160 U. S., 556-576.
Fowler v. Lamson, 164 U. S., 252-255.
Dibble v. Bellingham, 163 U. S., 63-69.
Gillis v. Hirschfield, 159 U. S., 658.
Rutland v. Cl. of Vermont, 159 U. S., 630.
Boughton v. Exchange Bk., 104 U. S., 427.
Dugger v. Bocock, 104 U. S., 695-601.
Santa Cruz v. Santa Cruz, 111 U. S., 361.
San Francisco v. Scott, 111 U. S., 768.
Chouteau v. Gibson, 111 U. S., 200.
Adams v. Burlington, 112 U. S., 123-128.
Chapman v. Goodnow, 123 U. S., 541-548.
San Francisco v. Itsell, 133 U. S., 65.

Neither the validity of a statute of the State of Massachusetts or of any authority derived thereunder was drawn in question on the trial of this action, and

no decision was rendered therein affecting its validity, the New York Courts merely construed the statute offered in evidence.

The mere construction by a State Court of a statute of another State without questioning its validity, does not deny to it the full faith and credit demanded by the statute in order to give this Court jurisdiction (Glenn v. Garth, 147 U. S., 360; Banholzer v. New York Life Insurance Co., 178 U. S., 402; Johnson v. New York Life Insurance Co., 187 U. S., 491; Finney v. Guy, 189 U. S., 385; Allen v. Allegheny, 196 U. S., 458).

To the same effect:

Central v. Laidley, 159 U. S., 103, 109.
Turner v. Wilkes, 173 U. S., 361.
Cross, etc., Club v. Louisiana, 224 U. S., 632-638.
Kennard v. Nebraska, 188 U. S., 304-308.
U. S. v. Lynch, 137 U. S., 280.
Ferry v. Kings Co., 141 U. S., 668-672, and cases there cited.
Winona v. Plainview, 143 U. S., 371-390.

The validity of a statute of the United States or authority exercised thereunder is drawn in question when the existence or constitutionality or legality of such law is denied and the denial forms the subject of direct inquiry in the case (U. S. v. Lynch, 137 U. S., 280; Linford v. Ellison, 155 U. S., 503; Snow v. U. S., 346-353; McLean v. R. R. Co., 203 U. S., 38).

Champion L. Co. v. Fisher, 227 U. S., 445-451.

"Courts of one State do not take judicial notice of the laws of another State whether

written or unwritten. They must be proved as facts.

"If it appears that the Courts of one State without questioning the validity simply construed a statute of another State no federal grounds would be presented" (citing cases).

Eastern etc. v. Williamson, 189 U. S., 122-125.

The questions presented in this case are purely of local law. It is a case arising upon a contract made in and which was to be performed and had been performed in the State of New York (Finding of Fact XXI, fol. 34, p. 17 Record) and the decision of the Court below herein having been based upon a question of local law this Court would seem to have no jurisdiction to review such decision upon a writ of error, and the findings of fact made by the Court below upon which the decision and judgment of the Court below was based are conclusive upon this Court.

This being a question of local law of the State Court, the decision of the State Court is conclusive upon this Court.

Avery v. Popper, 179 U. S., 305-315.
Yazoo v. Brewer, 231 U. S., 245-249.

The finding of a Court as to a fact decided upon the weight of evidence will not be reviewed in this court.

Republican v. Kansas, 92 U. S., 315.
Dower v. Richards, 151 U. S., 658.
Bartlett v. Lockwood, 160 U. S., 357.
Stanley v. Schwalby, 162 U. S., 255-278.
Egan v. Hart, 165 U. S., 188, 189.
Adams v. Church, 193 U. S., 510-513.

The final ruling in the Court of Appeals being based upon a state of facts which put the statute in ques-

tion entirely out of the case, no federal question is presented for the consideration of this Court.

Missouri v. Ferris, 179 U. S., 602-605.

The state of facts decided by the Court of Appeals in this action was what relation can a statute passed and made operative in the year 1902 have upon a contract made in the year 1883 coupled with a statute of the same State made operative at the same time that amendments shall not affect any remedy which may then exist, etc.

Decisions of State tribunals in respect to matter of general law cannot be reviewed on the theory that the law of the land is violated, such violation must be called to the attention of the Trial Court at the proper time and in the proper way.

Sayward v. Denny, 158 U. S., 180-183.

The only question presented here is whether there is any error of law in the judgment rendered by the Court upon the facts as found by it. It cannot review any of the exceptions to those findings, or to the refusal of the Court to find as requested (Roberts v. Benjamin, 124 U. S., 64, 71, 74; Shipman v. Straightville Mining Co., 158 U. S., 356-361); Chicago, M. & St. P. R'way Co. v. Clark, 178 U. S., 353-364; Hecker v. Fowler, 2 Wall., 123; Bond v. Dustin, 112 U. S., 604; Paine v. Central Vermont R. R. Co., 118 U. S., 152-158).

Lupton v. Auto Club, 225 U. S., 489-493.

The Court of Appeals rendered its judgment against the plaintiffs-in-error upon independent grounds not invloving a federal question; and which grounds are broad enough to maintain the judgment.

The record must show in order to justify a writ of error from this Court that the judgment was rested upon a disposition of the federal question and if this does not affirmatively appear the writ of error will be dismissed.

Johnson v. Risk, 137 U. S., 300-307.
Wood v. Skinner, 139 U. S., 393-397.
Beaupre v. Noyes, 137 U. S., 300.

"This Court" (U. S. Supreme Court) "has often decided that it is not enough to give us jurisdiction over the judgments of the State Courts for the record to show that a Federal question was argued or presented to that Court for decision. It must appear that its decision was necessary to the determination of the cause, and that way actually decided, or that the judgment as recovered could not have been given without deciding it" (citing cases).

Brown v. Atwell, 92 U. S., 327-329.

To same effect:

Marrow v. Brinckley, 129 U. S., 181.
Blount v. Walker, 134 U. S., 607.
Cook Co. v. Calumet, 138 U. S., 635.
Giles v. Teasley, 193 U. S., 146-160.

And if the questions of fact decided by the State Court are adequate to determine the controversy between the parties and broad enough to maintain the judgment independent of any Federal question then this Court is without jurisdiction although the State Court may have also decided such a question.

Eustis v. Bolles, 150 U. S., 361.
N. Y. & N. E. R. R. v. Woodruff, 153 U. S., 689.
Hammond v. Conn. Mutual, 150 U. S., 633.
Egan v. Hart, 165 U. S., 185-191.
Leonard v. Vicksburg, 198 U. S., 416.

Harding v. Illinois, 196 U. S., 78-88.
Hopkins v. McLure, 133 U. S., 380-388.
Hammond v. Johnson, 142 U. S., 73-78; and cases there cited.
New Orleans v. New Orleans, 142 U. S., 79-84.
No. Pacific v. Ellis, 144 U. S., 458-464.
Haley v. Breeze, 144 U. S., 130.
Delavan v. Reybold, 142 U. S., 637.

When the record shows that two questions are presented by the pleadings, one Federal and one non-Federal, and the judgment below rested upon a decision of the non-Federal question, this Court has no jurisdiction to review the judgment and the motion to dismiss the writ of error should be granted.

Adams v. Burlington, 112 U. S., 123-128.
De Saussure v. Gaillard, 127 U. S., 216-234.
Beatty v. Benton, 135 U. S., 244-254.
Hammond v. Connecticut, 150 U. S., 633.
Same v. Johnson, 142 U. S., 73-78.
California v. Davis, 151 U. S., 389-393.
Dibble v. Bellingham, 163 U. S., 63-69.
Moran v. Horsky, 178 U. S., 203-207-215.
Hale v. Lewis, 181 U. S., 473-480.
Haley v. Breeze, 144 U. S., 130-132.
Harrison v. Morton, 171 U. S., 38-47.
Bacon v. Texas, 163 U. S., 207.
McQuade v. Trenton, 172 U. S., 636-640.
Pierce v. Somerset, 171 U. S., 641.
Henderson v. Henderson, 141 U. S., 679.
Rutland R. R. v. Central R. R., 159 U. S., 630-640.
So. Pacific v. Schuyler, 227 U. S., 601-610.
Preston v. Chicago, 226 U. S., 447-450.
Gaar v. Shannon, 223 U. S., 468-470.
Adams v. Russell, 229 U. S., 353.
Holden v. Interstate, 233 U. S., 536.

And where an independent issue was tried by the Court upon which the case turned and judgment was rendered in the case the decision neither involved nor decided the questions which makes a case applicable to this Court.

Champion v. Fisher, 227 U. S., 445-452.
U. S. v. Meyer, 227 U. S., 452.
El Paso v. Eichel, 226 U. S., 590-597.

As appears by the certified record herein the plaintiffs-in-error upon the trial in the Court below did not claim or assert any right by or under the Constitution of the United States or under the laws of Congress thereunder. Such claim cannot be raised for the first time in the petition or writ of error.

The judgment in the Court below was rendered upon a trial of all the issues raised by the pleadings in this action.

From this judgment an appeal was taken by the plaintiffs-in-error to the Appellate Division of the Supreme Court whose only power in the premises will be found in Section 1350 of the Code of Civil Procedure of the State of New York which provides amongst other things as follows:

"An appeal to the Appellate Division from the final judgment brings up for review only the proceedings to take the final judgment or upon which the final judgment was taken, including the hearing or trial of the other issues in the action, if any."

"The jurisdiction of the General Term (now Appellate Division) extends only to a review of the exceptions taken on the trial (Boos v. World Mut. Life Ins. Co., 64 N. Y., 286)."

3rd Ave. R. R. v. Ebling, 100 N. Y., 98.

An appellant cannot urge as a ground of reversal a point that was not made upon the trial.

Burrows v. Van Deusen, 78 Misc. R. (N. Y.), 643.

Borough &c. Co. v. Harmon, 188 App. Div. (N. Y.), 689.
Buckley v. United &c. Co., 155 *id.*, 735.
Gelston v. Hoyt, 13 Johns., 551-577.
Adams v. Oaks, 20 Johns., 282.
Colden v. Knickerbocker, 2 Cowen, 31.

Where a defense was not pleaded nor the question in any manner raised upon the trial it cannot be considered for the first time upon appeal.

Post v. Manhattan R'way, 125 N. Y., 697.

An appeal to the Court of Appeals from a final judgment, etc., brings up for review in that Court only questions of law.

Sec. 1337, N. Y. Code Civ. Pro.
Sec. 191, Sub. 3, N. Y. Code Civ. Pro.
Sec. 9, Art. 6, Constitution State of New York.

Where a question has not been considered or covered by any findings in the Court below, the Court of Appeals will not deem the question before it for determination.

Matter of Carnegie Trust Co., 206 N. Y., 390-399.

Where a trial and general verdict have been had the Court of Appeals can only deal with questions of law upon exceptions duly taken.

Standard Oil v. Amazon, 79 N. Y., 506-510.
Wicks v. Thompson, 129 N. Y., 634.

The absence of an exception in the Court below is fatal to a review by the Court of Appeals.

Standard Oil v. Amazon (*supra*).
Jarvis v. Driggs, 69 N. Y., 148.
Keogh v. Westervelt, 66 N. Y., 636.

It is a general rule that questions not raised at the Trial Court which might have been there obviated

by the action of the Court or of the adverse party will not be heard on appeal as a ground of error.

Cohn v. Goldman, 76 N. Y., 284.
Mead v. Shay, 92 N. Y., 122.
Coates v. 1st Nat. Bk., 91 N. Y., 20-31.
Thayer v. Marsh, 75 N. Y., 340.
Osgood v. Toole, 60 N. Y., 475.

And where it appears by the record produced that the questions sought to be raised before this (U. S. Supreme) Court by the petition and assignments of error have no foundation in fact, the writ of error will be dismissed.

It is settled that in order to justify a writ of error to review the judgment of a State Court the record must show that the judgment rested upon the disposition of a Federal question.

Marsh v. Nichols, 140 U. S., 344-354.

N. B. *No federal question was raised upon the trial of this action in the Court below. Neither the Constitution nor the laws of Congress thereunder were mentioned at any time during the trial.*

"It is well settled and indeed now an elementary doctrine that, although a record may present in form a Federal question, a motion to dismiss will be allowed when it plainly appeared that the Federal question is of such an unsubstantial character as to cause it to be devoid of all merit and therefore frivolous."

Deming v. Carlisle, 226 U. S., 102-105.

"The record furnishes no indication that any Statutes of the United States was brought to the attention of the Court below, and a ruling asked upon it in connection with the objection that was made," etc. "No Judge in deciding upon the objection as it was

made and presented would be likely to suppose that if he" (admitted or rejected) "the evidence he would deny the defendant any 'right, title, privilege or immunity set up or claimed' under a Statute of the United States."

"If the judgments of the Courts of the States are to be reviewed here for decisions upon such questions, it should be only when it appears unmistakably that the Court either knew or ought to have known that such a question was involved in the decision to be made."

"The Court must be able to see clearly from the whole record that a certain provision of the Constitution or Act of Congress was relied on by the party who brings the writ of error and that the right thus claimed by him was denied."

Brown v. Colorado, 106 U. S., 95-97.

To the same effect:

Clark v. Pennsylvania, 128 U. S., 395.
Quimby v. Boyce, 128 U. S., 488.
Baldwin v. Kansas, 129 U. S., 52-57.

"In order to give this Court jurisdiction of a writ of error to review the judgment of the highest Court of a State on the ground that it decided against a title, right, privilege or immunity claimed under the Constitution or a treaty or a Statute of the United States, such right, title, privilege or immunity must have been specially set up or claimed at the proper time and in the proper way. If it was not claimed in the Trial Court and therefore by the law and practice of the State as declared by its highest Court could not be considered by that Court; or if it was not claimed before judgment in the highest Court of the State it cannot be asserted in this Court" (citing cases).

Morrison v. Watson, 154 U. S., 111-115.

The Supreme Court of the U. S. has no jurisdiction to review the decision of a State Court except upon a Federal question specially set up or claimed in the State Court.

Mutual v. McGrew, 188 U. S., 291.
Michigan v. Dix, 185 U. S., 112.
Oxley v. Butler, 166 U. S., 648.
Lovell v. Newman, 227 U. S., 412-422.
Dill v. Edey, 229 U. S., 199-208.
Selover v. Walsh, 226 U. S., 112-126.

The clause of the Constitution and the laws of Congress should have been specified by the plaintiffs-in-error in the State Court in order that this Court might see what was the right claimed by them and whether it was denied to them by the decision in the State Court.

Lawler v. Walker, 14 How., 149.
Oxley v. Butler, 166 U. S., 648-656.
Crowell v. Randall, 10 Pet., 368.
Maxwell v. Newbold, 18 How., 511-516.
Mutual v. Kirchoff, 169 U. S., 103-107.

Where federal rights are first asserted in an application for a writ of error on the ground of a denial of full faith and credit, etc., it raises no question that is reviewable in this Court.

El Paso v. Eichel, 226 U. S., 590-598.

When the record presents no Federal question this Court is without jurisdiction to review the judgment and cannot enter into the merits of the questions that were presented and determined in the State Court.

Ross v. Oregon, 227 U. S., 150.

No right under the Constitution of the United States was necessarily involved in the determination of the cause and the Court of Appeals was justified

in its ruling in omitting the consideration of rights under the Constitution of the United States.

According to the ruling of that Court nothing is considered by it not raised in the Court below.

It is not sufficient to raise such points in the petition for citation and writ of error for the first time.

Hulbert v. Chicago, 202 U. S., 275-280.

An assignment of errors cannot be available to import questions into a cause which the record does not show raised in the Court below and rulings asked thereon so as to give jurisdiction to this Court.

Ansbro v. U. S., 159 U. S., 595-598.
Muse v. Arlington, 168 U. S., 430-435.
Walker v. Sauvenat, 92 U. S., 90-92.

An assignment of error in this Court based upon an allegation that Federal questions were raised in the brief of the plaintiff-in-error to a State Court does not amount to a compliance with the requirements of Section 709 of the Revised Statutes of the United States. Such brief not being a part of the certified record to this Court from the Court below.

Zadig v. Baldwin, 166 U. S., 485.
R. R. Co. v. Rock, 4 Wall., 177, 180.
Miller v. R. R., 173 U. S., 193.
Keokuk v. Hamilton, 175 U. S., 233.
Chapin v. Fye, 179 U. S., 126-130.

Full faith and credit were not denied to the statutes of Massachusetts nor to the judgment roll of one of its courts as claimed in the petition for the writ of error and assignments of error herein. As documentary evidence upon the trial of this action, both statute and judgment were inadmissible as evidence upon the trial of this action.

The contract in this action having been made and completed in the State of New York, the laws of the State of New York must, therefore, control.

In an action brought in the Court of a State for the violation of a contract made in that State, the law of that State gives the right and measure of recovery.

Selover v. Walsh, 226 U. S., 112-123.

And the Court of Appeals of the State of New York has laid down the rule as to what constitutes the contract in cases similar to the present case.

The statute under which the corporation was organized, its by-laws, together with the application for and the certificate of membership, constitutes the contract between the member and the society.

Sabin v. Phinney, 134 N. Y., 423-428.
Shipman v. Home Circle, 174 N. Y., 398-408.
Hellenberg v. District No. 123, N. Y., 580-584.

It necessarily follows that as the plaintiff-in-error was incorporated in 1877, the statute produced on the trial herein having been passed in 1902, can certainly have no application. And that the judgment offered in evidence being based upon an admission that such corporation was acting under such statute of 1902 would also make that improper evidence in the case; also bearing in mind that the contract herein was made in the year 1883.

It follows, therefore, that such documentary evidence was properly not considered by the Courts of the State of New York, and that such failure of consideration did not and does not violate any law, and

certainly not the laws of the United States or of its Constitution as to full faith and credit, etc.

The provisions of the Constitution of the United States that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, etc., give no effect to judgments of a Court which had no jurisdiction of the subject-matter or of the parties.

Huntington v. Attrill, 146 U. S., 657-685.

To the same effect:

Bigelow v. Old Dominion, 225 U. S., 111-138.
Thompson v. Thompson, 226 U. S., 551-561.
Priest v. LeVegas, 232 U. S., 604-616.

POINT SEVENTH.

No federal question was raised by the pleadings nor upon the trial in the Court below, where, under the law of the State of New York, it must be raised for the first time to be considered by the Court either upon trial or upon appeal. That cannot be raised for the first time on appeal in this Court.

The certified record in this case shows absolutely that no federal question under Section 709 of the Revised Statutes of the United States did, in fact, arise upon the trial of this action in the Court below.

Reference being made to that record, it will be seen that such claim by the plaintiffs-in-error, in their petition for the writ of error and their assignments of error are untrue.

The statutes of the State of Massachusetts offered in evidence by the plaintiffs-in-error, viz: Chapters 119 and 109 of the revised laws of Massachusetts and no objection being made were received in evidence as Exhibits I and J (fols. 112 and 113; page 61, record) and form a part of the certified record herein (Exhibit I, pp. 91, etc., and Exhibit J, p. 95).

The Trial Court, in its decision, construes the statutes of Massachusetts thus:

> "That by the statutory law or public acts of the Commonwealth of Massachusetts, fraternal benefit organizations, of which the defendant, Supreme Council of the Royal Arcanum is one, have power to change and amend their rates of assessments" (Finding LXXVII; fol. 47; p. 25).

But the Trial Court also finds in the same decision, thus:

> "That the contract in all its essentials between the parties, was entered into, made and completed in the State of New York" (Finding XXI; fol. 34, p. 17, Record).

Full faith and credit was not due to the laws of the State of Massachusetts in the Courts of the State of New York upon a contract made in the State of New York.

And in any event, full faith and credit cannot be claimed upon the trial of any action to a statute which, being enacted subsequent to a contract, and which contract was executed fully by one of the parties thereto, could be claimed to be retroactive and

change a material part of such contract wherein vested rights had accrued to such party.

In any event, one of the statutes thus put in evidence, Exhibit J (page 95, Record) provides that:

> "Laws of amendment" etc., "shall not take away any remedy which may exist by law" etc., "against the corporation" etc., "for a liability previously incurred."

The judgment roll in the action of Reynolds v. Supreme Council of the Royal Arcanum was also offered in evidence by the plaintiffs-in-error, and being objected to as evidence, by the defendant-in-error, was not admitted.

Examination of the whole record will fail to show any mention whatever, of any claim of full faith and credit to the record by the plaintiffs-in-error on the production of the same, or of the offer of any proof as to its effect on any one as a judgment by and under the laws of Massachusetts. The proof was not that it was tried upon the merits, but that it was "tried by the Court upon an agreed state of facts, and a bill in chancery" etc., "and upon that agreed state of facts that decision was made" (Cross-examination of Curtis H. Waterman; fol. 114; p. 62, Record).

POINT EIGHTH.

The appeal taken herein by the plaintiffs-in-error is not well or properly taken. None of the questions mentioned in the statute (Section 709 of the Revised Statutes of the United States) appear to have been raised in the State Court or denied by it and the facts required by that section to be raised must appear to have been so raised upon the record certified by this Court.

POINT NINTH.

It follows therefore, upon the certified record herein that the statements and allegations contained in the petition of the plaintiffs-in-error produced to this Court upon the application for the writ of error herein were not only false and untrue but must have been known so to be by the person verifying the same. Also that the assignments of error herein produced at the same time to the Court were also false and untrue and known so to be by the plaintiff-in-error.

The writ of error herein should be dismissed and the judgment of the Court of Appeals affirmed. And as from the record produced it appears absolutely that the appeal taken herein was taken for delay and is frivolous, the affirmance should carry the usual full allowance on the amount involved herein, $3000 being the amount of the certificate.

Respectfully submitted,

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Supreme Court of the United States

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

OCTOBER TERM, 1912. No. 941.

SUPREME COUNCIL OF THE ROYAL ARCANUM ET AL., *Plaintiffs in Error*

v.

SAMUEL GREEN, *Defendant in Error.*

BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION TO THE MOTION TO DISMISS OR AFFIRM.

The plaintiffs in error contend that the motion should be denied because,—

(1) The record has not yet been printed, and the motion papers do not present the case in such a way as to enable the Court to deal understandingly with it, without reference to the transcript on file.

(2) There is no color for the motion to dismiss, because the case presents a clear federal question.

(3) The writ was not obtained for delay. Questions raised by it are fundamental to the continued existence of a system of interstate corporate relations involving the fulfilment of obligations aggregating ten billions of dollars.

I.

THE MOTION PAPERS DO NOT PRESENT THE CASE IN SUCH A WAY AS TO ENABLE THE COURT TO DEAL UNDERSTANDINGLY WITH IT, WITHOUT REFERENCE TO THE TRANSCRIPT ON FILE.

The transcript of the record was filed with the Clerk of this Court on or about January 25, 1913. The time for filing a statement of the parts of the record which the plaintiffs in error deem necessary to be printed under clause 9 of Rule X. has not yet expired, and the record has not been printed.

1. The insufficiency of the motion papers requires a denial of the motion.

It is well settled that, when the motion to dismiss is made before the record is printed, the moving papers must set forth the facts with sufficient fulness to enable the Court to act understandingly, and that failure to do so requires a denial of the motion.

> *Crane Iron Works* v. *Hoagland*, 108 U. S. 5.
> *National Bank* v. *Insurance Co.*, 100 U. S. 43.
> *Waterville* v. *Van Slyke*, 115 U. S. 290.

2. The motion papers in this case contain no adequate statement of the most important facts presented by the record.

The case depends upon the effect to be given by the Courts of New York to certain statutes and judicial proceedings of the State of Massachusetts in passing upon the validity of an assessment called pursuant to an amendment of corporate

by-laws made by a Massachusetts corporation, which is brought in question by a New York member under a written contract of membership.

Every phase of the question depends upom some one of a large number of written documents. Not one of these documents is set out in the papers before the Court. The membership application, the membership certificate, the corporate by-laws defining the terms of membership, the statutes of the incorporating State which still further define the terms and condition of membership,—all these essential factors which constitute the contract and measure the rights and liabilities of the parties thereto, are entirely omitted. Without such evidence before the Court, there is no basis for any intelligent action in regard to the case.

The case also involves the relation of the defendant in error to a stockholder's action in which a judgment was given in favor of the plaintiff in error in Massachusetts, which judgment the plaintiff in error alleged to be binding upon the defendant in error, but which the Courts of New York declined to receive in evidence. This appears in full detail in the transcript of the record, but the motion papers contain no evidence or reference whatsoever as to the character and nature of the judgment which was thus rejected over the exception of the plaintiff in error in the Court below.

Moreover, the moving party seeks to derive advantage from the rule that "to raise a Federal question . . . the objection . . . should have been made in the Trial Court, and to be reviewable here, the decision must be against the right so set up or claimed" (Motion Papers, page 10). The pleadings in the case show that the statutes and the judicial proceedings relied upon were set out in detail and at length in the answer in the case, and the assignments of error show that both questions were exhaustively argued in the Appellate Division and Court of Appeals of the

State of New York. No suggestion of these important portions of the record is contained in the Motion Papers.

The omission of these points of cardinal importance is in itself sufficient to require the denial of the motion.

3. Much of the matter contained in the Motion Papers is incorrect.

The defendant in error undertakes to summarize a large number of written instruments in his short "synopsis of the case." The documents can best speak for themselves. There can be no question as to what they say, but, when the defendant tries to say what they say, he falls into frequent error.

For example, he constantly speaks of the contract as one of "insurance," with that as the "main object," whereas the documents show a contract of pure corporate membership in which the benefit is incidental and radically different from commercial life insurance.

On page 3 of his brief he also declares that, when he became a member of the defendant association, the by-laws then in force provided that "a person becoming such member should pay assessments . . . according to a scale then set forth in said by-laws," whereas in truth and in fact the by-laws of said plaintiff in error at the time plaintiff became a member of said society provided for the alteration and amendment thereof, including the amount of assessments.

Again, the statement on page 14 of his brief that the action in Massachusetts was tried and decided upon an agreed state of facts, and "therefore it could and was not tried upon the merits," is diametrically opposed to the facts disclosed by the record.

Even the quotations made by the moving party are incorrect. For example, the opinion of the Court of Appeals,

as printed on pages 44–49 inclusive, is not a correct copy of the official opinion of the Court of Appeals, as shown by the authenticated copy affixed to the transcript of the record.

II.

THE CASE UNMISTAKABLY PRESENTS TWO SHARPLY AND WELL DEFINED FEDERAL QUESTIONS.

1. The judgment of the Supreme Court of New York denies faith and credit to the Public Acts of Massachusetts.

Finding LXXVII. of the Trial Court, printed on page 38 of the Motion Papers, states "that by the statutory law or Public Acts of the Commonwealth of Massachusetts, fraternal beneficiary organizations of which the defendant Supreme Council of the Royal Arcanum is one, have power to change and amend their rate of assessment."

The argument of the defendant in error on page 10, "that the New York Court, without questioning the validity simply construed a statute of Massachusetts," is without foundation. The Court adopted the construction of the statute which the plaintiff in error asked it to adopt, set out a copy of these statutes on the judgment roll, stated their effect clearly and unequivocally, and then expressly refused to give the same the effect which by law and usage they were entitled to in the State of Massachusetts. There is no suggestion that the statutes are penal in their nature, and the federal question as to the faith and credit to be given to the Public Acts of one State in a sister State is thus presented in the clearest possible form.

It is the established law in New York that the statutes of the State creating the corporation enter into and constitute a part of the contract of membership in a fraternal benefit society.

Sabin v. *Phinney*, 134 N. Y. 428.
Shipman v. *Protected Home Circle*, 174 N. Y. 398, 409.

It having been found as a fact by the Trial Court that the plaintiff in error had the power under the Public Acts of the Commonwealth of Massachusetts to make the changes complained of, and such statutes being a part of the contract, the utter disregard of the Massachusetts statutes by the Trial Court constituted a denial of the right guaranteed to the plaintiff in error under the Federal Constitution.

2. The judgment of the Supreme Court of New York denies faith and credit to the judicial proceedings of Massachusetts.

The judgment in the action of *Reynolds* v. *Supreme Council of the Royal Arcanum*, to which action the defendant was a party by representation, was duly pleaded in the answer as a conclusive bar to the maintenance of the action brought by the defendant in error. It was duly authenticated in accordance with requirements of the Acts of Congress, and offered in evidence before the Trial Court. The offer was rejected and exception duly taken thereto. The refusal of the Trial Court to receive in evidence the judgment in the Reynolds case was a violation of the Constitutional right of the plaintiff in error to have such faith and credit given to it as by law and usage it is entitled to in the State of Massachusetts, and presents a second federal question.

The Courts of New York have recognized that the contract in question is one of corporate membership.

"He [a member of a mutual benefit association] is to be regarded as an integral part of the corporation. His position is similar to that of a corporator in a corporation." . . .

Swan v. *Mutual Reserve Fund Life Association*, 155 N. Y. 9, 17.
See also 2 May on Insurance, § 548.

The question of corporate membership raised in this case makes it wholly different from the cases where the parties are related only as external contractors, as in simple contracts of sale or of commercial life insurance, which the defendant in error cites on pages 7 and 8 of his brief. The plaintiffs in error have no quarrel with these decisions, but they have no application to the point in issue. The defendant in error overlooks the controlling principle applicable to this case, in that it is the law of New York that in a contract of the kind here in question the statutes of Massachusetts enter into and form a part of the contract.

This Court has repeatedly and uniformly recognized that the construction and enforcement of contracts of this kind fall within its jurisdiction. The plaintiffs in error only ask for the application of the rule already announced in *Hawkins* v. *Glenn*, 131 U. S. 319, 329, 332, as follows:—

"We understand the rule to be . . . that the stockholder is bound by a decree of a court of equity against the corporation in enforcement of a corporate duty, although not a party as an individual, but only through representation by the Company.

"A stockholder is so far an integral part of the corporation that, in the view of the law, he is a privy to the proceedings touching the body of which he is a member. *Sanger* v. *Upton*, 91 U. S. 56, 58.

"We think it cannot be doubted that *a decree against a corporation in respect to corporate matters, such as the making of an assessment* in the discharge of a duty resting on the corporation, *necessarily binds its members*

in the absence of fraud, and that this is involved in the contract created in becoming a stockholder."

See to the same effect

Glenn v. *Liggett*, 135 U. S. 533.
Glenn v. *Marbury*, 145 U. S. 499, 506.
Bernheimer v. *Converse*, 206 U. S. 516.
Atchison, Topeka & S. F. Ry. v. *Sowers*, 213 U. S. 55.
American Express Co. v. *Mullins*, 212 U. S. 311.
St. Louis & Iron Mt. S. R.R. Co. v. *Taylor*, 210 U. S. 281, 293.
Hancock Nat. Bank v. *Farnum*, 176 U. S. 640.

3. The assignments of error show these questions are squarely presented in this case.

We have printed these assignments as an appendix to this brief. Especial attention is called to the first and sixth assignment, as follows:—

"1. Said Courts erred in holding by this affirmance of the judgment of the trial court in disregard of the Federal Constitution and the Statutes aforesaid that an assessment upon the members of a Massachusetts corporation duly levied upon them in respect to their membership in such corporation, by virtue of the Public Acts of Massachusetts ratified and affirmed by the highest Court of Massachusetts, the State of the domicile of the corporation, is not binding upon a member of the corporation residing in the State of New York."

"6. The said Courts erred in holding by the affirmance of said judgment entered July 23rd, 1910, that the refusal by the trial court to receive in evidence a duly certified and authenticated copy of a judgment roll in an action in the Supreme Judicial Court of Massachusetts, wherein the plaintiff in error corporation was defendant and one Stephen Reynolds and certain other parties in privity with and acting as the

representatives of the defendant in error were plaintiffs, wherein a decree was entered in favor of the plaintiff in error and binding upon the defendant in error in regard to the matters and things involved in the present proceeding then before said trial court, did not violate the provisions of Article IV, Section I, of the Federal Constitution, and the Act of Congress pursuant thereto, prescribing that such judgment roll, authenticated as aforesaid should have such faith and credit given to it in every court within the United States as it would have by law or usage in the Court of the State from which it was taken."

III.

THE WRIT WAS NOT OBTAINED FOR DELAY. QUESTIONS RAISED BY IT ARE FUNDAMENTAL TO THE CONTINUED EXISTENCE OF A SYSTEM OF INTERSTATE CORPORATE RELATIONS INVOLVING THE FULFILMENT OF OBLIGATIONS AGGREGATING UPWARDS OF TEN BILLIONS OF DOLLARS.

1. The interests of the plaintiff in error make the case one of momentous importance.

The Royal Arcanum has more than a quarter million members domiciled in the various States of the Union and the Provinces of Canada, with outstanding certificates promising the payment of approximately $500,000,000. It has already paid out in death benefits upwards of $155,000,000. More than a million people are dependent upon it for protection against the loss by death of their bread-winners.

The question of its right to collect assessments from its members upon an equitable and uniform basis is absolutely

vital to its continued existence. The fundamental underlying and dominating features of the contract of membership in a fraternal benefit society are those of absolute equality and mutuality,—equality in the bearing of the burdens and mutuality in the sharing of the benefits. It necessarily follows that members, wherever domiciled, of the same age, must pay the same amount for the benefits received. In the case at bar the Court of last resort in the domiciliary State of the corporation in passing upon the validity of these very amendments has upheld the same, and every member of the Order residing in the State of Massachusetts is required to pay the rates prescribed by such amendments.

The plaintiff in error is in this embarrassing situation: commanded by the Court of last resort in the State of its creation to collect assessments at a given amount and enjoined and restrained by the judgment now before this Court for review from collecting the very assessments, as commanded by the Court of its home State. Such a condition is intolerable. The rights of this Massachusetts corporation and its power to collect sufficient revenues to redeem its promised obligations ought to be regulated, controlled, and determined in accordance with the decision of the Court of last resort in the State of its creation.

The New York Court of Appeals in *Graham* v. *First National Bank*, 84 N. Y. 393, said,—

"It would scarcely be endurable if a railroad or insurance company, declaring dividends in this State should be bound to pay the stockholders in other States, according to the foreign laws, and in accordance with different and varying codes."

Why would it be any more "scarcely endurable" to require a New York corporation to pay dividends to stockholders in other States according to foreign laws than to

restrict a Massachusetts corporation levying assessments upon members in New York to the collection of the same in accordance with the exposition of the law as declared by the Courts of New York?

There is no question in this case as to the reasonableness or necessity of the rates adopted. The Trial Court expressly finds that "such rates actually represent the actual cost to the order for the benefits promised to members of each age"; and "equitably apportion the cost of protection among the members of the order, according to age and risk" (Findings LXIII. and LXIV., Motion Papers, p. 34).

The validity of the changes complained of has been upheld and sustained by the Supreme Judicial Court of Massachusetts, by the High Court of Justice in the Province of Ontario, by the Circuit Court of the United States for the Middle District of Tennessee, and in two instances by the Appellate Division of the Supreme Court of New York.

Reynolds v. *Supreme Council Royal Arcanum*, 192 Mass. 150.

Bartram v. *Supreme Council Royal Arcanum*, 6 Ont. W. R. 404.

Gaines v. *Supreme Council Royal Arcanum*, 140 Fed. Rep. 978.

Mock v. *Supreme Council Royal Arcanum*, 121 App. Div. 473.

Green v. *Supreme Council Royal Arcanum*, 144 App. Div. 761.

Similar amendments to by-laws increasing rates of assessment have been sustained heretofore by this Court:—

Korn v. *Mutual Ins. Co.*, 6 Cranch, 192 (February, 1810).

Wright v. *Minnesota Mutual Life Ins. Co.*, 193 U. S. 657 (April, 1904).

By what rule in the orderly administration of American jurisprudence can citizens of New York claim an unwarranted preference over members of the Order residing in other jurisdictions?

2. The existence of the fraternal beneficiary system of the United States depends upon the determination of this question.

There are upwards of a hundred fraternal benefit societies in the United States, with more than nine million members and with certificates outstanding promising the payment of more than $10,000,000,000.

None of these societies are restricted in the transaction of their business by state lines. These societies are one of the most potent factors in uplifting the general level of living in this country, both in furnishing the means of support and maintenance, when financial aid is most needed, and in binding together the citizens of widely separated States in a real community of interest.

These societies are all of comparatively recent origin. The administration of their affairs until very recent years has been largely experimental. Nearly, if not all of them undertook to transact their business upon rates wholly inadequate to redeem their outstanding obligations. The legislatures of various States, recognizing the tremendous importance of the fraternal beneficiary system and the necessity of collecting sufficient funds to pay death benefits, have passed statutory enactments requiring such societies to provide for the collection of sufficient rates of assessment to fulfil their promises. Compliance with these legislative requirements has universally necessitated the amendment of by-laws, increasing the rates of assessment. Unless the Courts sanction equitable and reasonable changes in by-laws of such societies, the societies themselves will

be inevitably destroyed by the conflicting requirements of the legislative and judicial authorities.

The right of the plaintiff in error to collect assessments legalized and sanctioned by the home State of the corporation is of vital importance to the entire fraternal beneficiary system in this country. This Court, as before shown, clearly has jurisdiction. The motion to dismiss the writ of error should be denied.

Respectfully submitted,

HOWARD C. WIGGINS,
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103 West Dominick Street, Rome, N.Y.

APPENDIX.

SUPREME COURT OF THE UNITED STATES.

SUPREME COUNCIL OF THE ROYAL ARCANUM and VAL M. SCHMITZ, Regent of DeWitt Clinton Council No. 419 of the Royal Arcanum, *Plaintiffs in Error*

v.

SAMUEL GREEN, *Defendant in Error.*

ASSIGNMENT OF ERRORS.

Now come the Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of DeWitt Clinton Council No. 419 of the Royal Arcanum, the above named plaintiffs in error, by Howard C. Wiggins, their attorney, and in connection with the writ of error filed herewith, say:

That in the record, proceedings, decision and final judgment of the Court of Appeals of the State of New York and of the Supreme Court of the State of New York aforesaid, in the said suit or action, there is manifest error in this, to wit:

1. Said Courts erred in holding by this affirmance of the judgment of the trial court in disregard of the Federal Constitution and the Statutes aforesaid that an assessment upon the members of a Massachusetts corporation duly levied upon them in respect to their membership in such corporation, by virtue of the Public Acts of Massachusetts ratified

and affirmed by the highest Court of Massachusetts, the State of the domicile of the corporation, is not binding upon a member of the corporation residing in the State of New York.

2. Said Courts having found as a fact that under the Public Acts of Massachusetts the plaintiff in error corporation had the power to adopt the amendments in question, erred by their failure and refusal to give full faith and credit to said Public Acts of Massachusetts as required by Article IV, Section 1 of the United States Constitution and the Statutes of the United States enacted pursuant thereto.

3. The said Courts erred in ordering and adjudging that the Order of the Appellate Division of the Supreme Court appealed from in said action be reversed and that the judgment of the Special Term in said action be affirmed, because the said judgment of the Special Term was made and rendered in disregard of the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereof.

4. The said Courts erred in holding and deciding that the judgment of July 23, 1910, in the above-entitled action should be affirmed, and that the defendant in error, Samuel Green, should have costs against the plaintiffs in error in the sum of Four Hundred Fifty-nine Dollars and Thirty-two Cents ($459.32), because said judgments were rendered in disregard of the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereof.

5. The said Courts erred in holding by the reversal of the order of the Appellate Division and the affirmance of the said judgment entered on July 23rd, 1910, that the trial court gave full faith and credit as required by the Constitution and Statutes aforesaid to the Public Acts of Massachusetts, as proved in the case.

6. The said Courts erred in holding by the affirmance of said judgment entered July 23rd, 1910, that the refusal by the trial court to receive in evidence a duly certified and authenticated copy of a judgment roll in an action in the Supreme Judicial Court of Massachusetts, wherein the plaintiff in error corporation was defendant and one Stephen Reynolds and certain other parties in privity with and acting as the representatives of the defendant in error were plaintiffs, wherein a decree was entered in favor of the plaintiff in error and binding upon the defendant in error in regard to the matters and things involved in the present proceeding then before said trial court, did not violate the provisions of Article IV, Section 1, of the Federal Constitution, and the Act of Congress pursuant thereto, prescribing that such judgment roll, authenticated as aforesaid should have such faith and credit given to it in every court within the United States as it would have by law or usage in the Court of the State from which it was taken.

7. The said Courts erred in failing to affirm the order of the Appellate Division reversing the judgment of the trial court, because said judgment was based upon the refusal of said trial court to receive in evidence the above described judgment of the courts of Massachusetts, certified and proved as required by the Act of Congress in regard to the proof of judicial acts and proceedings, and a refusal to give such judgment the faith and credit in the courts of New York to which said judgment would be entitled by law and usage in the courts of the State of Massachusetts in which it was rendered as said trial court was required to do by the Constitution of the United States, Article IV, Section 1, and the Statutes of the United States passed in pursuance thereto.

8. The said Courts erred in holding, by the affirmance of the said judgment of the trial court, entered on July 23rd, 1910, that the Supreme Court of the State of New York

gave full faith and credit to the judgment of the Supreme Judicial Court of the State of Massachusetts in the case of *Reynolds* v. *Supreme Council of the Royal Arcanum*, as pleaded and offered to be proved in the case, as it was required to do by the Constitution of the United States, and the Statutes of the United States as aforesaid.

9. The said Courts erred in not holding and deciding that the judgment and opinion aforesaid, in said Reynolds case was a conclusive assertion of the validity of the amendments here in question to the by-laws of the plaintiff in error corporation, so far as the defendant in error Green was concerned, and that full faith and credit as required as aforesaid, should be given to said judgment in the courts of New York.

10. The said Courts erred in failing to give, as required by the Federal Constitution and Statutes aforesaid, the judgment and opinion in the Reynolds case the same effect in the Courts of New York as it would have had or had in the Courts of Massachusetts, the domicile of the corporation.

11. The said Courts erred in not holding that the defendant in error, Samuel Green, a member of the plaintiff in error corporation, was bound in his relations with that corporation by the judgment in its favor in said Reynolds case, by a court of competent jurisdiction, and having jurisdiction of the parties to and subject matter of the present case, which judgment was duly pleaded and offered in evidence in this action.

12. The said Courts erred in sustaining and affirming by the decision and judgments aforesaid the refusal of the trial court to apply to the case the laws of Massachusetts, the domicile of the plaintiff in error corporation as proved in the case, for the purpose of determining the corporate power of said corporation and the rights and liabilities

under the contract of membership in it mentioned in the pleadings, as required by the Federal Constitution and the Statutes aforesaid.

13. That by the record aforesaid it appears that the aforesaid judgment was given by the Court of Appeals of the State of New York against the defendants below and the plaintiffs in error, in favor of the plaintiff below and defendant in error, whereas by the law of the land and Constitution of the United States, and the Acts of Congress passed pursuant thereto, the said judgment should have been given for the defendants below and plaintiffs in error, and against the plaintiff below and defendant in error.

All of said errors will appear fully and at large in the record in the case of *Samuel Green* v. *Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of DeWitt Clinton Council No. 419 of the Royal Arcanum,* in said Supreme Court of the State of New York, which will be duly certified to the Supreme Court of the United States, and to which reference is hereby made for the detailed statement of the errors aforesaid.

The assertion of a right, privilege or immunity under the United States Constitution by the plaintiffs in error was distinctly urged upon the trial of the cause in the Supreme Court of the State of New York, before the Appellate Division of the said court, and before the said Court of Appeals, as follows:

In and by the Second, Third and Sixth separate defenses contained in the amended answer of the defendants below, and in and by the Seventh Conclusion of Law submitted to the Justice before whom the cause was tried, proposed by the plaintiffs in error, refused by said justice, and duly excepted to.

In and by the Fifth and Sixth Points of the printed argument of the plaintiffs in error, submitted to the said Appellate Division of the Supreme Court.

In and by the Fifth and Seventh Points of the printed argument of the said plaintiffs in error submitted to the said Court of Appeals of the State of New York.

WHEREFORE, the Supreme Council of the Royal Arcanum and Val M. Schmitz, Regent of DeWitt Clinton Council No. 419 of the Royal Arcanum, your petitioners, the defendants below and plaintiffs in error, pray that the said judgment of the Court of Appeals of the State of New York, and the judgment of the Supreme Court of the State of New York, as aforesaid, be reversed and annulled, and altogether held for nothing, and that your petitioners be restored to all things which it has lost by the action of said judgments, etc., and that it may have such other and further relief, according to law, as to your Court may seem just and proper.

Dated January 7th, 1913.

HOWARD C. WIGGINS,

Attorney for Plaintiffs in Error, Office and Post Office Address, 103 W. Dominick Street, Rome, Oneida County, N.Y.

SUPREME COUNCIL OF THE ROYAL ARCANUM *v.* GREEN.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 106. Argued December 8, 9, 1914.—Decided June 1, 1915.

Where the trial court refuses to hold that the rights of the parties were to be determined by the law of another State in which a decree had been rendered establishing them and to apply such law, it refuses to give due effect to such decree, and a question arises under the full

faith and credit clause of the Federal Constitution and this court has jurisdiction under § 237, Judicial Code.

The rights of members of a corporation of a fraternal and beneficiary character have their source in the constitution and by-laws of the corporation, and can only be determined by resort thereto, and such constitution and by-laws must necessarily be construed by the law of the State of its incorporation.

The law of the State by which a corporation is created governs in enforcing liability of a stockholder to pay his stock subscription and in establishing the relative rights and duties of stockholders and the corporation.

A failure by the court to give effect to and apply the law of the State of incorporation in consideration of a judgment rendered in that State amounts to denying full faith and credit to such judgment.

In this case *held* that a judgment rendered by a court of the State of incorporation holding an amendment to the constitution and by-laws of a fraternal and beneficiary corporation to be legal, amounted to a construction of the charter by the courts of the State which the courts of another State were bound to recognize under the full faith and credit clause of the Federal Constitution.

A fraternal and beneficiary society is, for the purpose of controversies as to assessments, the representative of all of its members; and a judgment of the State of incorporation as to the validity of an amendment to the Constitution and by-laws must be given effect by the courts of another State even though not between the corporation and the same member.

Green v. *Elbert*, 137 U. S. 615, followed in striking from the files of this court the brief of counsel of one of the parties on account of its being so full of vituperative, unwarranted and impertinent expressions in regard to opposing counsel.

206 N. Y. 591, reversed.

THE facts, which involve the effect and application of the full faith and credit clause of the Federal Constitution and other matters, are stated in the opinion.

Mr. Howard C. Wiggins, with whom *Mr. Curtis Waterman*, *Mr. John Haskell Butler*, *Mr. W. Holt Apgar* and *Mr. Joesph A. Langfitt* were on the brief, for plaintiff in error.

Mr. F. J. Moissen for defendant in error:

Plaintiff in error is a corporation organized under the laws of Massachusetts; and, beyond such comity as any other State is willing to confer upon it, it has no corporate status in any other State, and is subject in such other State to any and all the laws, regulations and limitations prescribed therein upon foreign corporations.

The contract, the subject of the transaction herein, was made in and was to be performed in the State of New York, and therefore the rules of law as to its construction and performance must be under the laws of New York, and the laws of Massachusetts have no application.

Amendments to by-laws such as have been made to the by-laws of the plaintiffs in error as affecting contracts previously entered into by corporations like the plaintiffs in error have been held invalid by the courts of the State of New York as affecting such prior contracts and that rule of law is the policy of that State.

The Massachusetts judgment offered in evidence on the trial in the court below was properly excluded; it did not bind the defendant in error in any manner whatsoever, and the claim on the part of the plaintiff in error that the defendant in error is concluded by it, is absolutely untenable.

No Federal question was raised by the pleadings nor upon the trial in the court below, where, under the law of New York, it must be raised for the first time to be considered by the court either upon trial or upon appeal. That cannot be raised for the first time on appeal in this court.

Mr. Chief Justice White delivered the opinion of the court.

Conformably to the authority conferred by the general laws of Massachusetts to organize fraternal beneficiary

corporations, in 1877 there was issued to designated persons a certificate of incorporation under the name of the Supreme Council of the Royal Arcanum. By the constitution and by-laws, referred to in the certificate, the corporation became what is known as a fraternal association under the lodge system. Its principal objects as stated were:

"1st. To unite fraternally all white men of sound bodily health and good moral character, who are socially acceptable and between twenty-one and fifty-five years of age.

"2nd. To give all moral and material aid in its power to its members and those dependent upon them.

"3rd. To educate its members socially, morally and intellectually; also to assist the widows and orphans of deceased members.

"4th. To establish a fund for the relief of sick and distressed members.

"5th. To establish a widows' and orphans' benefit fund, from which, on the satisfactory evidence of the death of a member of the order, who has complied with all its lawful requirements, a sum not exceeding three thousand dollars shall be paid to his family, or those dependent on him, as he may direct. . . ."

There was power conferred by the constitution and by-laws to subsequently amend such constitution and by-laws in the manner therein provided. The general governing power of the Order was vested in the Supreme Council and the administration of its affairs under the supervision of such Council was entrusted to the officers named in the constitution. Authority was given to the Supreme Council to sanction the organization of local lodges or councils upon whom were conferred certain powers not in any way conflicting with the constitution and by-laws of the Order, and the members of such local lodges or councils were required to be members of the Order and

were subject to the duties and responsibilities which resulted from that relation and enjoyed also the resulting benefits.

Pursuant to the constitution under due authority there was organized in the State of New York a local lodge or council known as the De Witt Clinton Council No. 419 of the Royal Arcanum. In May, 1883, Samuel Green, the defendant in error, made application to become, and was admitted as, a member of this council. In his application it was directed that in case of his death, "all benefit to which I may be entitled from the Royal Arcanum, be paid to Louisa Green related to me as my wife, subject to such future disposal of the benefit, among my dependents, as I may hereafter direct, in compliance with the Laws of the Order. . . . I agree to make punctual payment of all dues and assessments for which I may become liable, and to conform in all respects to the Laws, Rules, and Usages of the Order now in force, or which may hereafter be adopted by the same."

Upon the admission of the applicant a certificate was issued to him as a member of the De Witt Clinton Council No. 419, of the Royal Arcanum upon the condition, among others, "that the said member complies, in the future, with the laws, rules and regulations now governing the said Council and Fund, or that may hereafter be enacted by the Supreme Council to govern said Council and Fund." The certificate then stated that upon compliance with these conditions, "The Supreme Council of the Royal Arcanum hereby promises and binds itself to pay out of its Widows' and Orphans' Benefit Fund, to Louisa Green (wife) a sum not exceeding Three Thousand Dollars, in accordance with and under the provisions of the laws governing said Fund, upon satisfactory evidence of the death of said member. . . ."

At the time this certificate was issued, under the by-

laws the amount of the assessment required to be paid to the corporation to enable it to meet claims coming due under the Widows' and Orphans' Benefit Fund was graded according to the age of the member, and the contribution required of Green for this purpose was stated in his certificate to be $1.80 per assessment, and he paid up to 1898 at that rate various assessments called for under the rules of the Order. In 1898 by a three-fourths vote of the Supreme Council, the system theretofore prevailing, exacting the payment of assessments as called for was changed and the duty was imposed to make payment monthly of a sum the amount of which, although still dependent upon the age of the member, was higher than had previously prevailed. Under these new rates the sum due from Green was $3.16 per month, and he met regularly the payments thus exacted until the year 1905. In that year by the action of the Supreme Council taken in virtue of the requisite three-fourths vote, while the standard of age was continued, the sum to be paid was again increased so that the monthly assessment of Green became $6.87, and from October, 1905, when these new rates became effective, down to February, 1910, it is not disputed that Green paid the amount of the increased assessments monthly, although it was found by the trial court that he did so under protest because of a denial on his part of the right of the Supreme Council even under the sanction of the requisite vote and in compliance with the forms of the constitution and laws of the Order to increase the rates.

In the meanwhile shortly after the going into effect of the increased rates, that is, in November, 1905, sixteen members of the Order, holders of certificates under the Widows' and Orphans' Benefit Fund, filed a bill in the Supreme Judicial Court of Massachusetts against the corporation in their own behalf and in behalf of all other certificate holders to vacate and set aside the by-

laws by which the rates had been increased on the ground that the increase was *ultra vires* of the corporation and violative of contract rights. The case was submitted by agreement of counsel to the whole court upon an agreed statement of facts and was on May 17, 1906, decided. The court after a careful review of the general nature of the corporation, of the character of the fund, of the rights of its members as evidenced by the certificates, of the constitution and by-laws of the corporation and the laws of the State applicable thereto, decided that the increase complained of was valid, impaired no contract right of the certificate holders and was entitled to be enforced. *Reynolds* v. *Supreme Council, Royal Arcanum*, 192 Massachusetts, 150.

Four years after this decision Green ceased to make the payments required by the by-laws of the corporation and in virtue of his membership and ownership of the certificate issued to him commenced in a state court in New York this suit against the Supreme Council and the Regent of De Witt Clinton Council No. 419, assailing the validity of the increase in the rate of assessment made in 1905 on the ground that it was void as exceeding the powers of the corporation and because conflicting with his contract rights as a member of the corporation and a certificate holder. The prayer of the bill was not that the corporation be restricted to the method and rate of assessment which prevailed in 1883 when the complainant became a member, but that the corporation be confined to the rate of assessment established by the amendment adopted in 1898 and that the complainant be decreed to have a contract right to pay only that sum monthly in discharge of his duty to pay assessments and that the corporation and its officers be enjoined during his life from exacting any greater sum or in any way suspending him for refusing to pay the amount fixed by the amendment of 1905.

The answer in twenty-seven distinct paragraphs asserted the validity of the assessment and the action of the corporation by which it was established. It asserted that the complainant as a member in a mere beneficiary association was bound thereby and that no contract rights of his were affected. In many reiterated forms of statement it was asserted that the corporation was created under the laws of Massachusetts and was subject thereto and that under those laws, by which the power to make the change was to be determined, the validity of the change was beyond question. It was then alleged that the *Reynolds* suit in the courts of Massachusetts was brought by certain members and certificate holders against the corporation not only in their own behalf but as a class suit in favor of all others similarly situated and that the facts in that case were substantially identical with those presented in this. The judgment of the Supreme Judicial Court of Massachusetts maintaining the by-law and holding that the assessment was valid and binding and that no contract rights existing in favor of certificate holders were impaired by the increase of rate was explicitly referred to and in addition the twenty-seventh paragraph of the answer expressly counted on the judgment as follows:

"That the defendant Supreme Council says that the rights of the plaintiff in respect to his contract with the said defendant and his membership in the defendant order, and the changes adopted by it were and are concluded and determined by the aforesaid judgment of the Supreme Judicial Court of Massachusetts; that under the Constitution of the United States the same is entitled to full faith and credit in the State of New York, and that the complaint should be dismissed."

On the trial the proceedings and judgment in the Massachusetts court duly exemplified as required by the Act of Congress were offered in evidence and excluded

and an exception reserved. The court made what in the record are styled findings of fact but which embrace every question of law which it was conceived the controversy could possibly involve. The court held that the complainant was not barred by laches in consequence of his having accepted the amendment to the rates made in 1898, and that as he had protested in making the payments during the four years as to the rates fixed under the amendment of 1905, he was not estopped from questioning the validity of that amendment. It was decided that under the law of New York as a certificate holder the complainant had a contract which entitled him to prevent any increase of rate over that established in 1898. So far as the law of Massachusetts was concerned it was declared that although it was governed by that law, the assessment would be valid, as the complainant was a member of a subordinate council existing in New York and doing business there, the rights of its members were controlled by the New York law wholly irrespective of the law of Massachusetts. The rights asserted by the complainant were adjudged to exist and the relief prayed for was granted.

The case then went to the Appellate Division of the Second Department. The court considering the character of the corporation, the provisions of its constitution and by-laws and the powers which they conferred on the corporation, as well as the application for membership and the certificate issued pursuant thereto, decided that the amendment as to rates was not *ultra vires* of the corporation but on the contrary was within its powers and violated no contract rights of the complainant. Without deciding whether the case was controlled by the law of Massachusetts, and without passing upon the action of the trial court in seemingly rejecting the offer of the Massachusetts judgment, the court, treating that judgment as before it and considering besides the Massachusetts law as open

for its consideration, held that the law of that State and the judgment there rendered served additionally to sustain the view taken as to the significance of the constitution and by-laws of the order and thus served additionally to demonstrate that error had been committed by the trial court in holding that under the law of New York there was a right to relief. 144 App. Div. (N. Y.) 761. The case then went to the Court of Appeals where the judgment of the Appellate Division was reversed and that of the trial court affirmed on the ground that the law of New York governed and established under the circumstances disclosed the right of the complainant to the relief which had been awarded him. 206 N. Y. 591.

It is not disputable that, disregarding details, all the rights asserted under the assignments of error come to one contention, that a violation of the full faith and credit clause of the Constitution of the United States resulted from refusing to hold that the rights of the parties were to be determined by the Massachusetts law and to apply that law, and in further refusing to give due effect to the decree rendered in Massachusetts concerning the subject of the controversy.

By a motion to dismiss it is urged that this question is not open for consideration because it was not raised below. But, as we have seen, the fact that the charter was a Massachusetts charter and the controlling character of the laws of that State on its operation and effect were asserted by way of defense over and over again in the pleadings. It is, indeed, true that in none of the averments concerning the duty to apply the Massachusetts law and the validity under that law of the provision of the constitutions and by-laws which was assailed was any express reference made to the full faith and credit clause of the Constitution of the United States, but this was not the case as to the Massachusetts judgment which was expressly pleaded, accompanied with an explicit averment that not

to give it due effect would be a violation of the full faith and credit clause of the Constitution of the United States. And as what was the due effect to be given to the judgment depended, as we shall hereafter more particularly point out, upon whether the Massachusetts law controlled the parties, since if it did, the judgment would be entitled to one effect, and if it did not, to another effect, it follows that the claim as to constitutional right concerning the judgment also involved deciding whether the Massachusetts law controlled. It follows that in both aspects the claim of full faith and credit under the Constitution of the United States was asserted, and whether the court below erred in holding that that clause was inapplicable because the contract was a New York contract governed by New York law is the question for decision. And the solution of that question involves two considerations: first, was the controversy to be determined with reference to the Massachusetts charter and laws and judgment; and second, if yes, did they sustain the right of the corporation to make the increased assessment complained of?

Before coming to consider the subject in its first aspect as controlled by authority, we briefly contemplate it from the light of principle in order that the appositeness of the authorities which are controlling may be more readily appreciated.

It is not disputable that the corporation was exclusively of a fraternal and beneficiary character and that all the rights of the complainant concerning the assessment to be paid to provide for the Widows' and Orphans' Benefit Fund had their source in the constitution and by-laws and therefore their validity could be alone ascertained by a consideration of the constitution and by-laws. This being true, it necessarily follows that resort to the constitution and by-laws was essential unless it can be said that the rights in controversy were to be fixed by disregarding the source from which they arose and by putting out of view

the only considerations by which their scope could be ascertained. Moreover, as the charter was a Massachusetts charter and the constitution and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that State, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws. Indeed, the accuracy of this conclusion is irresistibly manifested by considering the intrinsic relation between each and all the members concerning their duty to pay assessments and the resulting indivisible unity between them in the fund from which their rights were to be enjoyed. The contradiction in terms is apparent which would rise from holding on the one hand that there was a collective and unified standard of duty and obligation on the part of the members themselves and the corporation, and saying on the other hand that the duty of members was to be tested isolatedly and individually by resorting not to one source of authority applicable to all but by applying many divergent, variable and conflicting criteria. In fact their destructive effect has long since been recognized. *Gaines* v. *Supreme Council of the Royal Arcanum*, 140 Fed. Rep. 978; *Royal Arcanum* v. *Brashears*, 89 Maryland, 624. And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an assessment which was one thing in one State and another in another, and a fund which was distributed by one rule in one State and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum to be distributed. It was doubtless not only a recognition of the inherent unsoundness of the proposition here relied upon, but the manifest impossibility of its enforcement which has led courts of last resort of so many States in passing on questions involving the general authority of

fraternal associations and their duties as to subjects of a general character concerning all their members to recognize the charter of the corporation and the laws of the State under which it was granted as the test and measure to be applied. *Supreme Lodge* v. *Hines*, 82 Connecticut, 315; *Supreme Colony* v. *Towne*, 87 Connecticut, 644; *Palmer* v. *Welch*, 132 Illinois, 141; *Grimme* v. *Grimme*, 198 Illinois, 265; *American Legion of Honor* v. *Green*, 71 Maryland, 263; *Royal Arcanum* v. *Brashears*, 89 Maryland, 624; *Golden Cross* v. *Merrick*, 165 Massachusetts, 421; *Gibson* v. *United Friends*, 168 Massachusetts, 391; *Larkin* v. *Knights of Columbus*, 188 Massachusetts, 22; *Supreme Lodge* v. *Nairn*, 60 Michigan, 44; *Tepper* v. *Royal Arcanum*, 59 N. J. Eq. 321; *S. C.*, 61 N. J. Eq. 638; *Bockover* v. *Life Association*, 77 Virginia, 85. In fact, while dealing with various forms of controversy, in substance all these cases come at last to the principle so admirably stated by Chief Justice Marshall more than a hundred years ago (*Head* v. *Providence Insurance Co.*, 2 Cranch, 127, 167) as follows:

"Without ascribing to this body, which, in its corporate capacity, is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes. To this source of its being, then, we must recur to ascertain its powers. . . ."

In addition it was by the application of the same principle that a line of decisions in this court came to establish: first, that the law of the State by which a corporation is created governs in enforcing the liability of a stockholder as a member of such corporation to pay the stock subscription which he agreed to make; second, that the state law and proceedings are binding as to the ascertaining of

the fact of insolvency and of the amount due the creditors entitled to be paid from the subscription when collected; and third, that putting out of view the right of the person against whom a liability for a stockholder's subscription is asserted to show that he is not a stockholder, or is not the holder of as many shares as is alleged, or has a claim against the corporation which at law or equity he is entitled to set off against the corporation, or has any other defense personal to himself, a decree against the corporation in a suit brought against it under the state law for the purpose of ascertaining its insolvency, compelling its liquidation, collecting sums due by stockholders for subscriptions to stock and paying the debts of the corporation, in so far as it determines these general matters, binds the stockholder, although he be not a party in a personal sense, because by virtue of his subscription to stock there was conferred on the corporation the authority to stand in judgment for the subscriber as to such general questions. *Selig* v. *Hamilton*, 234 U. S. 652; *Converse* v. *Hamilton*, 224 U. S. 243; *Bernheimer* v. *Converse*, 206 U. S. 516; *Whitman* v. *National Bank*, 176 U. S. 559; *Hawkins* v. *Glenn*, 131 U. S. 319.

That the doctrines thus established if applicable here are conclusive is beyond dispute. That they are applicable clearly results from the fact that although the issues here presented as to things which are accidental are different from those which were presented in the cases referred to, as to every essential consideration involved the cases are the same and the controversy here presented is and has been therefore long since foreclosed.

The controlling effect of the law of Massachusetts being thus established and the error committed by the court below in declining to give effect to that law and in thereby disregarding the demands of the full faith and credit clause being determined, we come to consider whether the increase of assessment which was complained of was within

the powers granted by the Massachusetts charter or conflicted with the laws of that State. Before doing so, however, we observe that the settled principles which we have applied in determining whether the controversy was governed by the Massachusetts law clearly make manifest how inseparably what constitutes the giving of full faith and credit to the Massachusetts judgment is involved in the consideration of the application of the laws of that State and therefore, as we have previously stated, how necessarily the express assertion of the existence of a right under the Constitution of the United States to full faith and credit as to the judgment was the exact equivalent of the assertion of a claim of right under the Constitution of the United States to the application of the laws of the State of Massachusetts. We say this because if the laws of Massachusetts were not applicable, the full faith and credit due to the judgment would require only its enforcement to the extent that it constituted the thing adjudged as between the parties to the record in the ordinary sense, and on the other hand, if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such case being substantially the same as the duty to enforce the judgment.

Additionally, before coming to dispose of the final question it is necessary to say that in considering it in view of the fact that the Appellate Division treated the Massachusetts judgment as in the record and considered it, and that the court below made no reference to its technical inadmissibility, but on the contrary treated the question as being one not of admissibility but of merits, we shall pursue the same course and treat the judgment as in the record upon the hypothesis that the action of the trial

court did not amount to its technical exclusion but only to a ruling that as it deemed the law of Massachusetts inapplicable it so considered the judgment, and therefore held it merely irrelevant to the merits.

Coming then to give full faith and credit to the Massachusetts charter of the corporation and to the laws of that State to determine the powers of the corporation and the rights and duties of its members, there is no room for doubt that the amendment to the by-laws was valid if we accept, as we do, the significance of the charter and of the Massachusetts law applicable to it as announced by the Supreme Judicial Court of Massachusetts in the *Reynolds Case*. And this conclusion does not require us to consider whether the judgment *per se* as between the parties, was not conclusive in view of the fact that the corporation for the purposes of the controversy as to assessments was the representative of the members. (See *Hartford Life Ins. Co.* v. *Ibs*, this day decided, *post*, 662.) Into that subject therefore we do not enter.

Before making the order of reversal we regret that we must say something more. The printed argument for the defendant in error is so full of vituperative, unwarranted and impertinent expressions as to opposing counsel that we feel we cannot, having due regard to the respect we entertain for the profession, permit the brief to pass unrebuked or to remain upon our files and thus preserve the evidence of the forgetfulness by one of the members of this bar of his obvious duty. Indeed, we should have noticed the matter at once when it came to our attention after the argument of the case had we not feared that by doing so delay in the examination of the case and possible detriment to the parties would result. Following the precedent established in *Green* v. *Elbert*, 137 U. S. 615, which we hope we may not again have occasion to apply, the brief of the defendant in error is ordered to be stricken from the files and the decree below in accordance with the

views which we have expressed will be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.